

# IMPROVING THE EFFICIENCY, EFFECTIVENESS, AND INDEPENDENCE OF INSPECTORS GENERAL

---

## HEARING

BEFORE THE

COMMITTEE ON  
HOMELAND SECURITY AND  
GOVERNMENTAL AFFAIRS  
UNITED STATES SENATE  
ONE HUNDRED FOURTEENTH CONGRESS

FIRST SESSION

FEBRUARY 24, 2015

Available via the World Wide Web: <http://www.fdsys.gov/>

Printed for the use of the  
Committee on Homeland Security and Governmental Affairs



U.S. GOVERNMENT PUBLISHING OFFICE

94-275 PDF

WASHINGTON : 2016

---

For sale by the Superintendent of Documents, U.S. Government Publishing Office  
Internet: [bookstore.gpo.gov](http://bookstore.gpo.gov) Phone: toll free (866) 512-1800; DC area (202) 512-1800  
Fax: (202) 512-2104 Mail: Stop IDCC, Washington, DC 20402-0001

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

RON JOHNSON, Wisconsin *Chairman*

JOHN MCCAIN, Arizona	THOMAS R. CARPER, Delaware
ROB PORTMAN, Ohio	CLAIRE McCASKILL, Missouri
RAND PAUL, Kentucky	JON TESTER, Montana
JAMES LANKFORD, Oklahoma	TAMMY BALDWIN, Wisconsin
MICHAEL B. ENZI, Wyoming	HEIDI HEITKAMP, North Dakota
KELLY AYOTTE, New Hampshire	CORY A. BOOKER, New Jersey
JONI ERNST, Iowa	GARY C. PETERS, Michigan
BEN SASSE, Nebraska	

KEITH B. ASHDOWN, *Staff Director*

PATRICK J. BAILEY, *Chief Counsel for Governmental Affairs*

GABRIELLE D'ADAMO SINGER, *Deputy Chief Counsel for Governmental Affairs*

GABRIELLE A. BATKIN, *Minority Staff Director*

JOHN P. KILVINGTON, *Minority Deputy Staff Director*

TROY H. CRIBB, *Minority Chief Counsel for Governmental Affairs*

JONATHAN M. KRADEN, *Minority Senior Counsel*

PETER P. TYLER, *Minority Senior Professional Staff Member*

LAURA W. KILBRIDE, *Chief Clerk*

LAUREN M. CORCORAN, *Hearing Clerk*

## CONTENTS

---

Opening statements:	Page
Senator Johnson .....	1
Senator Carper .....	2
Senator Baldwin .....	17
Senator Peters .....	19
Senator McCaskill .....	22
Senator Booker .....	25
Senator Ayotte .....	28
Prepared statements:	
Senator Johnson .....	39
Senator Carper .....	41

### WITNESSES

TUESDAY, FEBRUARY 24, 2015

Hon. Michael E. Horowitz, Inspector General, U.S. Department of Justice .....	4
Hon. Steve A. Linick, Inspector General, U.S. Department of State .....	6
Hon. John Roth, Inspector General, U.S. Department of Homeland Security ...	8
Hon. Patrick P. O'Carroll, Jr., Inspector General, U.S. Social Security Admin- istration .....	10

### ALPHABETICAL LIST OF WITNESSES

Horowitz, Hon. Michael E.:	
Testimony .....	4
Prepared statement .....	42
Linick, Hon. Steve A.:	
Testimony .....	6
Prepared statement .....	50
O'Carroll, Hon. Patrick P., Jr.:	
Testimony .....	10
Prepared statement .....	76
Roth, Hon. John:	
Testimony .....	8
Prepared statement .....	59

### APPENDIX

FBI Statistics submitted by Senator Booker .....	82
Responses to post-hearing questions for the Record:	
Hon. Horowitz .....	85



# **IMPROVING THE EFFICIENCY, EFFECTIVENESS, AND INDEPENDENCE OF INSPECTORS GENERAL**

**TUESDAY, FEBRUARY 24, 2015**

U.S. SENATE,  
COMMITTEE ON HOMELAND SECURITY  
AND GOVERNMENTAL AFFAIRS,  
*Washington, DC.*

The Committee met, pursuant to notice, at 10:03 a.m., in room SD-342, Dirksen Senate Office Building, Hon. Ron Johnson, Chairman of the Committee, presiding.

Present: Senators Johnson, Ayotte, Carper, McCaskill, Baldwin, Booker, and Peters.

## **OPENING STATEMENT OF CHAIRMAN JOHNSON**

Chairman JOHNSON. This hearing will come to order.

Senator Carper, Inspectors General (IGs), we certainly want to welcome you and thank you for your thoughtful testimony that was delivered well in advance of this hearing, which was very helpful.

In preparing for this hearing, it was interesting, because working with Senator Carper, we have issued a mission statement for this Committee. It is simple: to enhance the economic and national security of America. But, within that, we have also listed a lot of priorities in terms of what this Committee is about. Our third priority under the Governmental Affairs section of this Committee was to identify, reduce, eliminate duplication, waste, fraud, and abuse within government, and, obviously, when you take a look at the IGs' authorization language, that is really what you are about.

Two weeks ago, we held a hearing with the Government Accountability Office (GAO), and at that hearing, I said, particularly for this Committee, that agency is one of our favorite agencies, not to slight you gentlemen, because within the agencies, through the departments, certainly the Offices of Inspector General (OIG) are just crucial for our mission and for really accomplishing something we all agree on. I do not care whether you are Republican or Democrat, whether you are a big government person or somebody who is a little bit more toward limited government, what government we have we all want it to be as efficient and as effective as possible, and that is certainly the role that you play within your departments and your agencies.

In the GAO hearing, just in 2 years, the recommendations that GAO had made resulted in about \$40 billion worth of savings, and in the course of the hearing, as we were hearing additional rec-

ommendations, just a back-of-the-envelope calculation showed there were about \$100 billion worth of potential savings there. And, looking through your testimony, it is looking also like, with your efforts, we are saving hundreds of millions, if not billions, of dollars, as well. So, this is, I think, from my standpoint, an important hearing.

We certainly want to make sure that the Offices of Inspector General remain independent, that you have full access to the information that is required, and we are committed to helping any way we can legislatively. I know Senator McCaskill and Senator Grassley have been working on an Inspector General reform bill. I want to be fully supportive of that. I think we are looking at, hopefully, introducing that later this week with an awful lot of input from this hearing. So, this is very timely. We are going to want to use your testimony and your advice in terms of how we can craft that. I am hoping that Senator Carper will be a willing partner in that, as well.

Chairman JOHNSON. And, speaking of Senator Carper, I would like to turn it over for your opening comments.

#### **OPENING STATEMENT OF SENATOR CARPER**

Senator CARPER. Thank you very much, Mr. Chairman. Thanks for pulling this together, and our thanks to each of you for joining us.

It is especially nice to see John Roth. How many days have you held your post now? Are you up to a year yet?

Mr. ROTH. Not quite a year yet, Senator. Thank you.

Senator CARPER. All right. I look forward to catching up with you and seeing how it is going. But, thank you all for being here.

I said to Michael, if he keeps showing up as often as he does, we are going to have to put him on the payroll, because he is one of our more faithful witnesses and valued, as well, as you all are.

The Chairman has mentioned our interest in working with GAO. I have a statement I want to enter for the record.<sup>1</sup> I will just say this. The Chairman has heard me say this to him. Senator Baldwin has heard me say this. And, I do not know if our colleague from Michigan has heard me say this, but when Dr. Coburn and I for years led the Subcommittee on Federal Financial Management, we learned how to leverage the effectiveness of a small Subcommittee by working with the full Committee.

And, then we learned how to leverage our effectiveness further by working with the Office of Management and Budget (OMB) and by working with GAO. And, then we figured out, maybe we should work with the IGs, and we learned how to do that. And, then we learned how to work with nonprofit organizations that have a real interest in more efficient operation of our government. And, by doing all of that, we were able to accomplish a good deal, sometimes just by writing a letter, sometimes just by announcing a hearing, sometimes by just making a phone call, threatening to make a phone call, introducing a bill. You name it, we can get things done.

<sup>1</sup> The prepared statement of Senator Carper appears in the Appendix on page 41.

But, we see you very much as our partners in this and part of a, really, a good team. The key here is for all of us to be pulling in the same direction, and part of the purpose of this hearing is to find out how we are doing in that regard and are there some things that we need to do legislatively, or maybe with a phone call or a letter, that would enable you and the people that work with you and your respective teams across the Federal Government, would enable you to be more effective in your work and more satisfied in your work.

But, the people of America are counting on us, and as the Chairman says, there are a lot of things people do not agree much on, but this is one they do. And, I from time to time talk to folks who say to me, "I do not mind paying taxes. I just do not want you to waste my money." Or, "I would be willing to pay more taxes. I do not want you to waste my money." Nobody wants us to waste their money. And, part and parcel of what you help us do is to reduce that as best we can. And, we can always do better, but today's hearing will enable us, hopefully, to do better.

Thank you all.

Chairman JOHNSON. Thank you, Senator Carper.

I also have a formal statement. We will enter both of those in the record.<sup>1</sup> Without objection, so ordered.

It is the tradition of this Committee to swear in witnesses, so if you would all rise and raise your right hand.

Do you swear the testimony you will give before this Committee will be the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. HOROWITZ. I do.

Mr. LINICK. I do.

Mr. ROTH. I do.

Mr. O'CARROLL. I do.

Chairman JOHNSON. Thank you.

I will introduce you right before you testify, so we will start out with Michael Horowitz. He is the Inspector General for the Department of Justice (DOJ) and Chairs the Council of the Inspectors General on Integrity and Efficiency (CIGIE)—one of my favorite acronyms, by the way. Prior to joining the Inspector General Office, Mr. Horowitz had a decorated career as a Federal Prosecutor in the Criminal Division of the Department of Justice and in private practice at Cadwalader, Wickersham and Taft.

Mr. Horowitz, we look forward to your testimony.

---

<sup>1</sup> The prepared statement of Senator Johnson appears in the Appendix on page 39.

**TESTIMONY OF THE HONORABLE MICHAEL E. HOROWITZ,<sup>1</sup>  
INSPECTOR GENERAL, U.S. DEPARTMENT OF JUSTICE**

Mr. HOROWITZ. Thank you, Mr. Chairman, Senator Carper, and Members of the Committee. Thank you for inviting me to testify today, and thank you for the Committee's bipartisan support for Inspectors General.

Effective and independent oversight has never been more important, but to conduct that oversight, an IG must have timely and complete access to agency records. This is an issue of utmost importance, as evidenced by the letter signed by 47 Inspectors General in August 2014 strongly endorsing this principle.

The IG Act could not be clearer. Inspectors General are entitled to complete, timely, and unfiltered access to all documents and records within the agencies' possession. Delaying or denying access imperils an IG's independence, impedes our ability to provide effective and independent oversight, and erodes the morale of the dedicated professionals that make up our staffs.

My office knows these problems all too well. In particular, the Federal Bureau of Investigations (FBI) continues to take the position it first raised in 2010, that the IG Act does not entitle my office to access to certain records in the FBI's possession, such as Grand Jury, Title III electronic surveillance, and Fair Credit Reporting Act information.

In May 2014, the Department's leadership asked the Office of Legal Counsel (OLC) to issue an opinion addressing the FBI's legal objections. However, 9 months later, we are still waiting for that opinion. I cannot emphasize enough how important it is that OLC issue its opinion promptly, because the existing process at the Department undermines our independence and essentially assumes the correctness of the FBI's position. The status quo cannot continue.

We appreciate the strong support from Congress in trying to address these issues. In December 2014, a provision was included in the Appropriations Act, Section 218, which prohibits the Justice Department from using appropriated funds to deny my office timely access to records unless in accordance with an expressed limitation in the IG Act. While the law only recently went into effect, it is clear it has had a positive effect with some components.

However, the FBI maintains its contrary legal position to this day. As a result, it is continuing its costly, wasteful, and time consuming process of reviewing documents responsive to our requests to determine whether it can produce them to us. As we are directed to do by Section 218, we have now recently reported in three instances, including whistleblower cases, where the FBI's process has been inconsistent with the provision of Section 218.

It is long past time to resolve this legal dispute. The FBI's position contradicts the clear intent of the IG Act, Congress's intent when it created our office, the FBI's and the Department's practice prior to 2010, where it frequently provided the very same categories of information it is now claiming it cannot provide us with, and two legal decisions by Federal District Judges finding that, in fact, we, the OIG, are entitled to access Grand Jury information.

<sup>1</sup> The prepared statement of Mr. Horowitz appears in the Appendix on page 42.



We remain hopeful that OLC will conclude that the IG Act entitles my office to access all records in the Department's possession. However, should the OLC decide otherwise, I would be pleased to work with the Committee to develop an appropriate legislative remedy.

Let me briefly mention a few areas where the ability of Inspectors General to conduct strong and effective oversight could be enhanced.

One such area is the capacity of Inspectors General to obtain testimony from former agency employees, contractors, and grant recipients. While the IG Act empowers us to subpoena records from individuals, we cannot require them to testify, even if they have critical evidence. While I believe any such authority should include protections to ensure it is used appropriately and only when necessary and does not inadvertently impair Justice Department prosecutions, I am confident such protections can be developed while also empowering Inspectors General to carry out their responsibilities.

Another area where strong and effective Inspectors General oversight could be enhanced is by enabling us to more efficiently obtain and match readily available information that we already have access to in furtherance of our efforts to combat waste, fraud, and abuse. My colleague, Inspector General O'Carroll, will address this issue further when he discusses the need to address the Computer Matching Act limitations that we face.

We also need to address concerns that have been raised relating to the work of CIGIE's Integrity Committee, including with respect to the timeliness of its work and the transparency of its efforts. Inspectors General must maintain the highest levels of accountability and integrity, and as Chair of the Council of Inspectors General, I will make it a top priority to improve the procedures of the Integrity Committee.

Finally, I would like to note that there are currently many vacancies in the Inspector General community. As this Committee has recognized previously, Acting Inspectors General and career staff carry on the work of the offices during a vacancy and they do it with the utmost of professionalism. However, a sustained absence of confirmed leadership is not healthy for any office. On behalf of the Inspector General community, I would encourage swift action with respect to selecting and confirming candidates for current and future vacant Inspector General positions.

In conclusion, I look forward to working with this Committee to ensure that Inspectors General continue to be empowered to provide the kind of independent and objective oversight for which they have become known and for which the taxpayers deserve.

I would be pleased to answer any questions the Committee may have.

Chairman JOHNSON. Thank you, Mr. Horowitz.

Our next witness is Steve Linick. He has been the Inspector General for the Department of State and the Broadcasting Board of Governors (BBG) since September 2013. I would note that was a position that was held vacant for quite some time, correct? Prior to his appointment, he served as the first Inspector General of the Federal Housing Finance Agency. Mr. Linick.

**TESTIMONY OF THE HONORABLE STEVE A. LINICK,<sup>1</sup>  
INSPECTOR GENERAL, U.S. DEPARTMENT OF STATE**

Mr. LINICK. Thank you, Chairman Johnson, Ranking Member Carper, Members of the Committee. Thank you for inviting me to testify today regarding the work of OIG at the Department of State and the Broadcasting Board of Governors.

I have had the privilege to lead the OIG and its talented staff for the past 17 months. This OIG differs from others in a number of respects.

First, OIG's focus is on U.S. Government operations worldwide, involving more than 72,000 employees in 280 overseas missions. This is in addition to OIG's oversight of the Department's and BBG's domestic operations.

Second, OIG has historically and as required by law served as the Department of State's inspection arm. We have highly experienced inspectors who inspect domestic and overseas units around the world. The reports of these inspections, which focus on issues ranging from security to leadership, are highly valued within the Department and the larger foreign affairs community. Since the beginning of my tenure, we have redoubled our efforts to focus on improving security for our people and facilities, improving oversight of contracts and grants, and enhancing information technology security. Let me elaborate a bit on each.

First, protecting the people who work in the Department is our top priority. OIG has inspected physical security at overseas posts for years. However, since the September 2012 attacks on U.S. diplomatic facilities in Benghazi, Libya, OIG has stepped up its oversight efforts related to security. There is no doubt the Department has made progress in improving overseas security. Nonetheless, challenges still remain. Through our inspections and audit work, we continue to find notable security deficiencies. For example, our audit of the Local Guard Program found that firms providing security services were not fully vetting local guards they hired to protect our embassies, placing at risk our posts and personnel. Also related to security, OIG is currently involved in reviewing the Department's reported compliance with recommendations made by the Accountability Review Board (ARB) convened in the aftermath of the 2012 attacks in Benghazi.

Second, OIG has enhanced its efforts to oversee the Department's management of contracts and grants, which totaled approximately \$10 billion in 2014. Contract and grant management deficiencies, including lack of training, weak oversight, and inadequate monitoring, have come to light repeatedly in our audits, inspections, and investigations over the years. They were highlighted in two recent Management Alerts that I provided to senior management officials.

Last, we continue to be very concerned about the Department's management of information technology (IT) security. OIG assessments of the Department's efforts to secure its IT infrastructure have found significant recurring weaknesses, including inadequate controls around who may access and manipulate systems. Vulnerabilities in the Department's systems also affect OIG's systems, which is part of the same network. As we noted in a Novem-

<sup>1</sup> The prepared statement of Mr. Linick appears in the Appendix on page 50.

ber 2013 Management Alert, there are thousands of administrators who have access to the Department's databases. That access runs freely to OIG's IT infrastructure and creates risks to our operations.

Since joining OIG, I have adopted certain practices to enhance the effectiveness and efficiency of OIG's independent oversight of the Department and the BBG. Let me take this opportunity to briefly mention some of them.

As IGs, we work together with our Departments, contributing to their success by assisting them in becoming more efficient, effective, and economical. To be successful at this job, it is important to have effective and cooperative working relationships with Department principals, as well as open lines of communication. To this end, I meet regularly with Deputy Secretary Heather Higginbottom, about once a week, and periodically with Secretary John Kerry to discuss OIG's work as well as the most critical issues facing the Department. I also meet with Under Secretaries and Assistant Secretaries.

In addition to meeting regularly with Department principals, I adopted the practice of issuing Management Alerts and Management Assistance Reports. They supplement and enhance the impact of our audits, inspections, evaluations, and investigations by alerting senior officials in the Department to significant issues that require immediate corrective action. Often, these issues are systemic or cross-cutting. To date, senior management has engaged with us on the issues we have highlighted and have begun to take steps to respond to our concerns.

We have also created a new office in OIG, the Office of Evaluations and Special Projects (ESP). This office publishes evaluations and special projects, including some of our Management Alerts, while complementing the work of OIG's other offices. For example, we are currently undertaking a joint review with the Department of Justice OIG of a number of shooting incidents in Honduras in 2012 involving the Drug Enforcement Agency (DEA) and Department of State personnel and resources. An attorney in this new OIG office is leading our office's efforts to enhance whistleblower protections.

Before I was Inspector General, I spent many years as a Federal Prosecutor. One of my areas of focus was procurement fraud. Through that work, I came to appreciate the value of criminal and civil remedies, including suspension and debarment, to combat such fraud. Since arriving at OIG, we have enhanced our efforts in both our Office of Audits and Investigations to identify and refer appropriate cases to the Department for suspension and debarment.

Drawing on my experience as a prosecutor, I have also initiated a program to place one or more qualified OIG employees as Special Assistant United States Attorneys in appropriate positions in the Department of Justice. We have found that having knowledgeable employees in such positions leads to quicker and more effective investigation and prosecution of fraud cases.

Finally, I would like to close by talking about the impact of our work. In my written testimony, I quantified some of the financial metrics demonstrating OIG's positive return on investment to

American taxpayers. But, financial statistics do not adequately reflect some of our most significant impacts: The safety and security of people and the integrity of the Department's operations and reputation. Those are key motivators for our employees, many of whom are on the road for long periods of time or who serve for extended periods at dangerous locations. I am honored to serve alongside and lead them.

In conclusion, Chairman Johnson, Ranking Member Carper, and Members of the Committee, thank you again for the opportunity to testify today. I take seriously my statutory requirement to keep the Congress fully and currently informed and I look forward to your questions.

Chairman JOHNSON. Thank you, Mr. Linick.

Our next witness is Mr. John Roth. He has served since last March as the Inspector General for the Department of Homeland Security (DHS). In addition to previous work for the Food and Drug Administration (FDA), Mr. Roth had a 25-year career as a Federal Prosecutor, including Chief of Staff to the Deputy Attorney General. Mr. Roth.

**TESTIMONY OF THE HONORABLE JOHN ROTH,<sup>1</sup> INSPECTOR GENERAL, U.S. DEPARTMENT OF HOMELAND SECURITY**

Mr. ROTH. Chairman Johnson, Ranking Member Carper, and Members of the Committee, thank you for inviting me here today to testify.

For an IG, independence is the coin of the realm. The GAO's yellow book describes it as the State of mind that allows an individual to act with integrity and exercise objectivity and professional skepticism. Professional skepticism is an attitude that includes a questioning mind and a critical assessment of evidence, and in a nutshell, that is my job. I am a professional skeptic. I act as an agent of positive change within the Department by having the freedom to be independent and objective. I am here to ask the difficult questions, to challenge the Department I work for to be better, to be more efficient, to ensure rigor in Departmental operations, and to look for and eliminate waste.

I am independent of the Department while, at the same time, part of it. The Inspector General Act gives me significant authority and substantial protection from undue influence. My salary is fixed by statute and I can be removed only by the President. I have, with very few narrow exceptions, the authority to conduct any investigation or any audit and write any report concerning Department operations that, in my judgment, is necessary or desirable. The law gives me the absolute right to protect the identity of whistleblowers, upon whom I depend to expose waste, fraud, and abuse. I have control over my own personnel and operations and employ my own counsel.

Yet, for all the substantial power and protection the Congress has given me, it still requires the men and the women within my office to have the dedication and the courage to ensure compliance with the Act, and it requires the Secretary to understand the very valuable role that the Inspector General plays.

<sup>1</sup> The prepared statement of Mr. Roth appears in the Appendix on page 59.

In addition to independence, transparency is critical to my work. The Act contemplates that my reports, to the greatest possible extent, are available to the public. Openness and transparency are critical to good government. The Department sometimes raises objection to certain information in our reports, marking parts of our reports as “For Official Use Only,” or “Law Enforcement Sensitive.” These designations are not recognized in the law, and in my experience, they risk being used to attempt to avoid revealing information that is embarrassing to the agency involved.

That being said, we, of course, need to ensure that information that could cause harm to DHS is not revealed. In those situations, I use my discretion to redact information from public reports. To assist me in exercising that discretion, I require requests to come from the component or agency head, coupled with an articulation of the actual specific harm that would result from such a disclosure. Too often, the fear of harm is highly speculative and fails to balance the need for transparency against the risks of disclosure.

Recently, we have had issues with the Transportation Security Administration (TSA) designating material as “Sensitive Security Information (SSI), within a report concerning the IT operations at JFK Airport in New York. The designation of SSI is in the absolute and unreviewable discretion of the Administrator of TSA and improper disclosure of it by me would carry significant administrative and civil penalties. What was especially troubling about our episode, in my view, was the length of time it took—almost 6 months—to get resolution of this issue, and the fact that my security experts who wrote the report were confident that the information that they wanted to publish did not harm IT security, and that similar information had been published only months earlier in previous audit reports without objection.

The SSI designation is a useful tool to protect sensitive information in a manner that gives TSA flexibility. However, I am worried that SSI can be misused, as I believe it was in this circumstance, to prevent embarrassment. We intend to conduct a formal review of TSA’s stewardship of the SSI program and report those results to the Secretary and the Committees with jurisdiction over it.

A brief word about resources for the OIG. The budget for our office is relatively tiny. We represent just 0.23 percent of the DHS budget, yet we have an outsized impact on the operation of the Department. For every dollar that is given to the OIG, we return more than \$7 in savings, as reflected by our statutory performance measures. This number, in fact, vastly understates our performance, because much of our best work—audit and inspections report that shed light on problematic programs, for example—do not carry with it a cost savings, yet the value to the American taxpayer is incalculable.

Unfortunately, our budget has actually shrunk since fiscal year (FY) 2012. As a result, our onboard strength has decreased by about 15 percent. We have been forced to cut training to less than a third of what we have deemed to be appropriate, reducing our ability to do our job and decreasing morale. And yet, at the same time, DHS’s authorized workforce has grown by about 5,000, representing a 2.3 percent increase. So, the Department continues to grow, but the Inspector General’s Office, the one entity that is

charged with saving money and creating efficiency, shrinks. This, I believe, represents a false economy.

Finally, I should discuss briefly the shutdown of DHS, which will occur this Friday unless Congress acts. For my office, this means the oversight function will come to an end. We will stop work on all our audits and reviews except for a few auditors who are working on FEMA's use of the Disaster Relief Fund, and our special agents in the field who are engaged in criminal investigations. Those who stay will be required to work, but be in unpaid status. In that regard, they are like the majority of Homeland Security employees. We will ask them to protect our borders, patrol our seas, ensure the security of the airplanes we fly on, protect the President, keep us safe from those who have sworn to do us harm, but we will ask them to do so without an assurance of when their next paycheck will come. Additionally, during this time, as it has been since October, the Department will be deprived of the budget stability necessary for coherent management of DHS programs and operations.

Mr. Chairman, that concludes my prepared statement. I, of course, welcome any questions.

Chairman JOHNSON. Thank you, Mr. Roth.

Our next witness is Patrick O'Carroll, Jr. He has been the Inspector General for the Social Security Administration (SSA) since 2004 and served a number of years prior to that in the office. Mr. O'Carroll has also 26 years of service for the United States Secret Service. Mr. O'Carroll.

**TESTIMONY OF THE HONORABLE PATRICK P. O'CARROLL, JR.,<sup>1</sup> INSPECTOR GENERAL, U.S. SOCIAL SECURITY ADMINISTRATION**

Mr. O'CARROLL. Good morning, Chairman Johnson, Ranking Member Carper, and Members of the Committee. I want to welcome the new Members of the 114th Congress and the new Members of this Committee. Thank you for the invitation to participate in this discussion.

In 2010, my office identified a thousand people who were on Social Security Disability while also collecting Federal Workers' Compensation, but without reporting that to the Social Security Administration. We determined that the Social Security Administration overpaid these people over \$40 million. Unfortunately, we did not have a computer matching agreement with the Department of Labor (DOL), so SSA could not recover those funds and we could not pursue criminal cases.

Today, I would like to highlight three tools that would strengthen our ability to detect fraud, waste, and abuse, report operational weaknesses or vulnerabilities, and invest in program integrity initiatives.

First, my office has shown that data matching can be extremely effective in identifying Social Security improper payments. For example, our auditors matched Homeland Security travel data against SSA records. We identified thousands of Supplemental Security Income recipients who were outside of the United States for

<sup>1</sup> The prepared statement of Mr. O'Carroll appears in the Appendix on page 76.

more than 30 days, making them ineligible to receive these payments. Based on the match, we estimated that 35,000 people improperly collected \$150 million.

We notified SSA and made policy recommendations, but we could not take action on specific individuals because we did not have a computer matching agreement. The Computer Matching and Privacy Protection Act (CMPPA) requires us to secure a matching agreement through SSA's Data Integrity Board. Unfortunately, the process is difficult and can take a year or more. Thus, we undertook this Homeland Security match for statistical purposes only, which is allowed under the CMPPA without an agreement. But, similar to the Workers' Compensation match I mentioned earlier, we could not forward any names to SSA nor could we explore any criminal prosecutions.

We also have delayed a promising investigative project with the Department of Transportation Office of Inspector General. With a data match, we could identify licensed commercial drivers who concealed work activity so that they could collect disability payments. GAO examined this issue in 2008 and referred critical findings to us, but we have not been able to undertake this type of work without a matching agreement.

The CMPPA requirement compromises our independence and delays time sensitive audit and investigative efforts. An exemption to the law to permit matches related to audits and investigations designed to identify fraud and waste would greatly benefit the IG community and all taxpayers. A matching agreement exemption would allow other potential projects, including matching Social Security data against State marriage records, Workers' Compensation data, and vehicle registration databases. These and other data can help our office and SSA identify fraud and prevent improper payments.

The Health and Human Services (HHS) and its OIG are already exempt from data matches designed to identify fraud, waste, and abuse. It makes sense to extend this exemption to all OIG data matches for the same purpose.

Additionally, an exemption to the Paperwork Reduction Act (PRA) for general audits or investigations would benefit the IG community. Because we oversee a benefit program, our audits require us to survey beneficiaries and other members of the public. Often, we want to collect identical information from many individuals. OMB has indicated that these audits are subject to approval under the Paperwork Reduction Act. However, this process can take several months, which hinders our ability to complete audits on critical issues and provide timely responses to our stakeholders. A PRA exemption for general audits would improve our ability to be responsive to you and allow us to identify more improper payments and fraud.

For example, we would like to interview representative payees serving vulnerable beneficiaries who have been overpaid many times. We want to determine if payees are aware of and understand SSA's reporting requirements. With PRA exemption, we could complete this audit without delay, to determine if SSA needs more outreach to the representative payees, and make payees more accountable for the funds that they oversee.

In my role at Social Security, I have long been an active member of CIGIE. My colleagues here today, and all CIGIE members, work to address common challenges and share oversight best practices. As this Committee knows, my office has taken a lead role for CIGIE in measuring agency compliance with recent legislation and mandates to reduce Federal improper payments.

To strengthen our ability to identify and prevent improper payments, we support the establishment of a self-supporting fund for integrity activities. We have proposed to make available to SSA and our office a portion of the actual collected overpayments. These funds would be used only for integrity activities that would provide a significant return on investment.

An integrity fund could prove effective for deceased payee fraud investigations, a significant workload for our special agents. Last year, we investigated over 600 people who misused the Social Security benefits of someone who was deceased. Criminal convictions of about 150 people generated \$35 million in recoveries and restitution. If we had an integrity fund, we could reinvest a portion of those funds for other integrity work.

In conclusion, skillful, independent, and timely oversight is paramount to the integrity and efficiency of all Federal agencies. My office has a 20-year distinguished history of conducting effective audits and leading high-impact investigations. However, we still face obstacles in our efforts to promote the integrity and efficiency of SSA's programs and operations. In sum, three specific tools can help us do our work better and faster: a CMPPA exemption, a PRA exemption, and an integrity fund. We appreciate this forum for our discussion and we look forward to working with you as you consider our proposals.

Thank you again for the invitation to testify today and I will be happy to answer any of your questions.

Chairman JOHNSON. Thank you, Mr. O'Carroll.

I think as we all just witnessed here, we have four Inspectors General, great integrity, and I just really appreciate your thoughtful testimony.

Senator McCaskill, I did mention before you got here in my opening comments the work you have been doing with Senator Grassley on a bill to certainly codify some of the requests they had, and if you want to do it right now, that is fine, or before your question.

Senator McCaskill. I can do it before my questions, but thank you for asking that.

Chairman JOHNSON. No, I appreciate your efforts on that.

There are a number of suggestions that have been made here, some recommendations of things that we need to, I think, legislatively provide so you can do your job. I do want to go first to Mr. Horowitz and probably Mr. Roth about Acting IGs. I know in terms of the Veterans Administration (VA), we have had an Acting IG. We have had some real problems in the VA. Senator Baldwin and I have certainly witnessed what is happening in Wisconsin. I am concerned about that. Senator McCaskill and I were involved in, I guess, investigations regarding the Acting IG in the Department of Homeland Security, and we saw the problem there.

The question I have for you, Mr. Horowitz, what is the problem in appointing permanent IGs? In terms of the VA, it was well



known, I think it was back in November 2013, that the permanent IG was going to retire as of December. That position has been vacant now for basically 14 months. What is the hang-up in terms of identifying? Is it just lack of available individuals? Is it lack of will?

Mr. HOROWITZ. That is an excellent question and I think one of the issues is simply making these positions priorities in terms of the nominating process, the vetting process, and then the confirmation process.

Speaking—I think you have three, actually, of us are in agencies that have had this issue arise. My own agency, Glenn Fine, my predecessor, announced in 2010 that he was going to be leaving in January 2011. I was nominated in July 2011 and confirmed in March 2012. So, even with sufficient notice, the process took a lengthy period of time.

There are plenty of available candidates who are interested in becoming IGs. I know from 6 weeks now on the job as Chair of the Council of IGs, we send resumes to the Presidential Personnel Office of interested candidates that we have looked at and vetted, and there has to be a commitment to move these nominations promptly.

Chairman JOHNSON. How many vacancies are there, and how many people have been nominated for those positions?

Mr. HOROWITZ. If I recall correctly, both Presidentially confirmed positions and designated Federal entity positions, I believe the number is 11 vacancies, and there is one nominee for those 11 slots pending.

Chairman JOHNSON. So, I think that is a problem. If there are plenty of people that are available for the position, we need to get those nominated, and certainly, I think, this Committee will be dedicated to move those through the confirmation process as quickly as possible.

Mr. Roth, you obviously got into a Department in the Office of Inspector General where there were some real morale problems and we had an Acting Inspector General. Senator McCaskill and I, in our investigation of that position, certainly saw the corrosive and the improper result of having an Acting Inspector General that might be vying for the permanent Inspector General. Can you speak a little bit to what you found when you entered your office.

Mr. ROTH. Well, certainly, unfortunately, or perhaps fortunately, you are in as good a position as anyone to understand the effect on the morale of the individuals there, both because of the threat to the independence of the IG as well as the appearance of the threat to the independence of the IG. And, it really does not matter if you are independent or not independent. Once you have lost that perception of independence, you are pretty much done, because the only difference between, as I like to tell Secretary Johnson, the only difference between me and the rest of the 225,000 people in the Department of Homeland Security is that I am, in fact, independent and am perceived to be that way. That is the value that we add, and once you lose that, you can never be effective again.

Chairman JOHNSON. In your testimony, you used, I think, an important word. You said “courage.” Can you describe an instance of courage that was required by an Inspector General?

Mr. ROTH. I think this happens all the time, and I think you see that, for example, with Mr. Horowitz's situation with the FBI, where this is a situation in which two very powerful forces are at loggerheads. And, the fact that you have a confirmed Inspector General who has all the protections of the IG Act—that our salary is fixed, we do not get a bonus, they cannot fire us, we can do any audit that we choose to do that we believe is incredibly important to be able to really speak truth to power. And, that is, in fact, part of our job.

Chairman JOHNSON. What type of pressure do you come under, do Inspectors General come under, that require courage to push back on?

Mr. ROTH. Well, you have to admit, we are not very popular sometimes, because no one likes to be audited, right. We are in the bad news business. Oftentimes, we go in and we expose programs that have significant waste or significant problems to it, and we do so with a certain rigor based on the training that our auditors receive to be able to do it in a regimented sort of logical way. And, that is very unpleasant for the people being audited, and, of course, there is going to be push-back with regard to that and it is very important to be able to simply hold your guns with regard to that.

I will say that I am fairly fortunate, because the Secretary in my Department understands the value of the IG and is a fairly sophisticated individual when it comes to my role versus his role. So, I am fortunate there, but I think other people may have some horror stories.

Chairman JOHNSON. Thank you. I will get to the other two. I want to go back to Mr. Horowitz because Mr. Roth just used a word I was going to use, "push-back." In the case of the FBI denying you access to information, is there legitimate push-back from them? Is there a legitimate reason for their classification? And, I will be asking across the board, whether it is matching or some of these other areas that you need help on. What are the legitimate reasons why there are so many Department personnel that do push back? Specifically talk about the FBI.

Mr. HOROWITZ. In the access area, we got access to information up to 2010 in all of these categories. No law changed in 2010. No policy changed. The IG Act stayed the same, the Grand Jury statutes. Everything stayed the same. It was simply a decision by the General Counsel's Office in 2010 that they viewed now the law differently, and as a result, they were not going to give us that information.

In the national security letter reviews that we did, we have done a lot of national security reviews of the FBI's use of the authorities Congress has given to them. In the middle of our third review of the national security letter matter, which we released last year, information we got at the start of the review, prior to 2010, was no longer given to us after the change in legal position, credit information. It made no sense. And, it is, frankly, from my standpoint, inexplicable, other than a new lawyer making a new decision about a law that had not changed. And, it should not be allowed to stand.

There is nothing more I can do at this point, frankly, other than having testified about seven times now and sending the letters pursuant to the Appropriation Act to the appropriators and to you and

the other Committees that oversee us and try and get some action. Our power comes from speaking out publicly and hoping that there is followup and action as a result.

Chairman JOHNSON. Well, hopefully, the seventh time is a charm.

Mr. HOROWITZ. Yes. [Laughter.]

Chairman JOHNSON. With that, Senator Carper.

Senator CARPER. Thanks, Mr. Chairman.

Again, our thanks to each of you for your testimony and for your responses to our questions.

I want to first take up the issue of those agencies for whom no permanent or Senate confirmed IG is in place. A year or two ago, Dr. Coburn and I, along with a number of people on this Committee, sent a letter to the President, and we said this is a problem and it needs your attention. And, I think we got some response, and there were a number of IGs that were nominated subsequent to that.

But, I believe there are at least two off of that list that we wrote to the President about some time ago that are still situations where the IG is there in an acting position. Do you know if that is correct?

Mr. HOROWITZ. I believe that is correct. There are—in each of—in several of the open positions, vacant positions, several IGs who have spent many months as acting, done a very strong job, but are sitting there in acting positions for over a year.

Senator CARPER. Mr. Chairman and colleagues, we may want to do again what we did a year or so ago and keep raising this as an issue, try to establish a sense of urgency, and I would hope that the other colleagues on our Committee would like to join us in doing that.

Mr. Roth, Chairman Johnson, and Senator Sasse, who is a new Member of our Committee, were down on the Mexican border in South Texas a couple of weeks ago, and one of the things we heard in terms of strengthening the border, from a number of folks who said the real key to border security is technology and finding and deploying force multipliers to help make the men and women on the ground, the Border Patrol and others, more effective in their work.

One of the force multipliers that we witnessed personally, up close and personal, were drones, and we talked a lot with the folks there about that technology and its effectiveness and how cost effective it is. I am not going to get into this today in a public setting, but we very much need to somehow reconcile the findings of your office with the needs and the perceived needs, strongly held views, if you will, of the Department of Homeland Security.

I hope this year we are going to take up again Homeland Security legislation, immigration reform, I hope, border security legislation, and there is going to be a strong interest in deploying more assets in terms of drones. We have to make sure that the money that we are spending, the taxpayer money that we are spending, is cost effective. So, we need for you to work with us. We need for you to work with the agency to try to resolve this issue so that we make informed decisions going forward. We will just leave it at that for right now.

Mr. O'Carroll, I once asked a member of my staff—he was talking to me about a Death Master File (DMF), and I said, what is the Death Master File, and he said it is a file you do not want your name to be on, because— [Laughter.]

Because if it is, you are dead. And, I said, well, you are probably right. I am not ready for that yet. But, I understand that, as you know, and you spoke to it in your testimony, a lot of people whose names are on that file who still receive benefits from a variety of Federal agencies, and I am led to believe it has something to do with our reluctance at the Social Security Administration to more broadly share that information to other agencies who have a legitimate need for that in terms of program integrity.

I think you touched on this in your testimony. Come back and help me. Drill down on this with us, if you will, because we actually passed legislation out of this Committee last year as part of our improper payments legislation. We ran into a brick wall over in the House of Representatives, in the Subcommittee of Ways and Means, and I just want to get to the bottom of this and see if we cannot avoid that brick wall and if we cannot actually get this done this year. I think we are leaving a lot of money—tens of millions, maybe hundreds of millions of dollars—on the table, and it is not just unfortunate, it is tragic. Please.

Mr. O'CARROLL. Well, Senator Carper, about 2.5 million people die every year, and that information is shared with SSA by the States, and that is usually done electronically. Sometimes, it is very good. Sometimes, it is not as good. And, as you were saying, you do not want to be on that list for a couple reasons. One is you do not want to be on the list because you are dead. But, you also do not want to be on the list and be alive but everyone thinks you are dead, because you will not be able to get credit.

So, anyway, we have done a lot of work on that. We have worked with SSA. We have kept your Committee and the Committees on the House side informed on this. And, I guess an easy example of where there is an issue on it is that every year, with the amount of information coming into SSA, if a person is not on benefits, oftentimes, that record may not be corrected by SSA.

So, as an example, on an audit that we just did, we found about 6.5 million people that are on SSA's records that are over 112 years of age.

Senator CARPER. How many?

Mr. O'CARROLL. Six-point-five million people are on SSA's records as alive when they are over 112 years of age.

Senator CARPER. That is remarkable.

Mr. O'CARROLL. I was going to say, usually a handful of people are in that age group as it is.

So, anyway, that is a major issue. So, when the Death Master File is released, that information on it is going to be showing that a person who is deceased is alive. Then, fraud or other misuse can happen with that information. So, that is one issue on it.

The other issue is that that information is only shared right now, or the death information that SSA has is shared with about eight benefit-paying agencies. So, if you are not a benefit-paying agency, you are not getting all that death information. So, it is turned over from SSA first to the benefit-paying agencies and then the Depart-

ment of Commerce, and the Department of Commerce then sells a public version to the financial industry. And, when it hits the financial industry, that is where the problems are with the accuracy. So, if it is showing you as dead when you are alive, or alive when you are dead, you are going to have those type of credit issues.

Recent legislation mandates a delay in sending out the information, so that if it is incorrect and you are alive and you are reflected as deceased, there will be 3 years to fix it before it goes out. Now, as it goes out immediately, you are going to be spending a large amount of your time trying to go to all the credit industries and explain to them that you are alive when, because of a glitch you are on the Death Master File.

So, anyway, we have done a lot of work on the Death Master File. We have made a lot of recommendations. We are trying to get SSA to share more with the Federal agencies through the "Do Not Pay" initiative so that they will have the most up-to-date information. And, we have also asked SSA to extend resources to fixing the records of those six million people that are over 112 years of age, but SSA is saying that they are unable to do it because they are using their resources just to take care of people that are on benefits and that it would be a bridge too far for them to go back and make those corrections at this time.

Senator CARPER. All right. Well, we look forward to continuing to work with you on this. Thank you all very much.

Chairman JOHNSON. Thank you, Senator Carper.

The order of questioning will be Senator Baldwin, Senator Peters, Senator McCaskill, and then Senator Booker. Senator Baldwin.

#### **OPENING STATEMENT OF SENATOR BALDWIN**

Senator BALDWIN. Thank you, and I want to thank you, Mr. Chairman and Ranking Member Carper, for holding this very valuable hearing.

And, I want to thank the witnesses for being here today and sharing your insights and your time. Inspectors General are clearly essential to the proper functioning of government, and you and your staffs are internal auditors. You are the stewards of taxpayer dollars, the agents of quality control, and the enemies of waste, fraud, and abuse. But, to achieve your goals, Inspectors General must be properly resourced as well as provided with unfettered access to both required information and agency officials. Inspectors General must also be empowered to followup on findings and recommendations of their audits and investigations. And, without an ability to compel the agency in question to take remedial action, an IG's impact is severely limited.

As the Chairman referenced in his opening remarks, he and I have seen an example of this in the case of the Department of Veterans Affairs Office of Inspector General and the Tomah VA Medical Center in Tomah, Wisconsin. I recognize that there is not a representative here from the VA Office of Inspector General, but I guess I have some more general questions about best practices but, let me just go a little bit further. I have questions for each of the witnesses as to how each of your offices handle issues of followup and transparency.

In the case of the Tomah VA facility, the VA Office of Inspector General found evidence of troubling opioid prescribing practices and recommended certain changes at the facility and the regional level. However, the Secretary's Office in Washington was unaware of these recommendations, and it seems that whatever reforms and recommendations were put in place at the local facility, Tomah, either had not been implemented, had not been implemented effectively, or were insufficient to address the issue.

It makes no sense to me that an IG would make recommendations to solve problems at a local facility and then entrust that facility solely, or with regional oversight, to implement these changes without Federal oversight, without oversight from its managers who may be in Washington or based elsewhere. So, I have three questions related to this for each of you.

If an Office of Inspector General recommends changes at a local Federal facility, should the Federal offices in Washington who are charged with overseeing those local facilities be made aware of these recommendations? Second, how do you ensure recommendations are implemented effectively? And, third, what role do transparency and communication play in assuring compliance? And, why do we not just go starting with Mr. Horowitz.

Mr. HOROWITZ. Thank you, Senator. We regularly do followup reviews. So, for example, we are in the middle of a followup on the Fast and Furious matter to see if the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has implemented the recommendations that we made. We just issued our third report on Section 215 of the Patriot Act and how the FBI has used those authorities. I mentioned the national security letters review. We did multiple followups of the FBI's use of those authorities. And, in each instance, look at our prior recommendations and made new recommendations on top of the old ones.

We regularly make known our recommendations to leadership. We make sure we are following up to ensure implementation. In some cases, obviously, we initiate additional reviews, but we do followup and, in fact, put in place a process by which we are now periodically sending our open recommendations report to the Deputy Attorney General and the Attorney General so they can see how many are open and how long they have been open and what they are about. And, we modeled that, frankly, after this Committee's letter to us and the House Oversight and Government Reform Committee's letter to us annually about open recommendations so that we can make those known to the Department's leadership.

And then, finally, in terms of transparency, we make all of our reports, our audits, and reviews public, subject to, obviously, classification issues. So, in some instances, we are not able to do that, but where the law allows us to make it public, we will make it public.

Senator BALDWIN. Mr. Linick.

Mr. LINICK. Thank you, Senator. You raise a good point. As IGs, we cannot require the agencies to comply with our recommendations. So, we can only try to persuade them to do so. We can publish those recommendations in our semi-annual reports. We can tell Congress and try to exert influence that way. So, this is a difficult area for IGs.

We, too, have a followup compliance review process. We have units in our office which do compliance followup reviews. The problem is, the agencies can agree all they want to implement recommendations, but the rubber meets the road when they are actually implementing them, and sometimes agreeing with implementing them is not the same as actually implementing them.

We are currently doing a followup review with respect to our report on the Benghazi situation. We actually issued a report looking at the Accountability Review Board process. And, we are also looking at how the agency is complying with our recommendations, which we issued in September 2013. But, in addition to that, the Benghazi Accountability Review Board issued 29 recommendations which are vital to the security of our folks overseas, and the extent to which the Department complies with those recommendations is absolutely critical. So, we are doing a compliance review on the Benghazi ARB reports. It is someone else's report, but we are looking to see their compliance on that. And, we do that in other cases where there are critical recommendations.

The other thing I would mention is this. Another tool that we use to ensure compliance with recommendations is our Management Alerts. We have recently issued a number of Management Alerts where we found recommendations were not being followed, in part because the recommendations were narrow in the previous reports. So, we have issued these Management Alerts to broaden our recommendations to aim them at senior leadership, because compliance with the recommendations has to come from the top down. So, using Management Alerts is another way we do that.

And, like IG Horowitz said, our reports are also public, and the taxpayer has a right to see what we say and how the Department is complying with what we say.

Senator BALDWIN. Mr. Roth.

Chairman JOHNSON. To be fair to other Senators, we can come back to that in a second round. Your time has expired, Senator Baldwin. I would like to go to Senator Peters next.

#### **OPENING STATEMENT OF SENATOR PETERS**

Senator PETERS. Thank you, Mr. Chairman, and thanks to each of the witnesses today and your testimony, which is very interesting.

Mr. Roth, I know you mentioned that all of you are not real popular with the agencies, but I will say you are very popular with this Committee. We really appreciate the work that you do, the service you give to this country, not only saving taxpayers money, but also making sure that the policies that are in place, that we put in place and others, are actually followed. So, thank you to all four of you for your work and your service to this country.

I would like to address, in fact, one of those policies that I think is of interest to the folks on the Committee and that deals with homeland security generally, but Mr. Horowitz, I would like to discuss briefly the Terrorist Watch List as well as the No Fly List. As you know, it can be a serious problem if an individual who should be on the No Fly List is not on that list for some reason. We are reminded in my area in Detroit, we had the so-called "Underwear Bomber" on Christmas Day back in 2009 that was known to the

U.S. Government as a potential threat, but was not on the consolidated list.

But, it is also a problem when folks get on the No Fly List when they perhaps should not be on that No Fly List. I am very proud to represent a very large Arab American population. In fact, the largest Middle Eastern population outside the Middle East resides in Michigan, and I hear repeatedly of folks who find themselves on this list and they are unsure why they are on that list and it disrupts their plans dramatically. In fact, I was at an Arab American Chamber of Commerce meeting and heard from a number of individuals who have been disrupted and feel that they do not have an opportunity for due process to get off that list.

I know your office has looked into this and you have studied that and audited that. If you have some recommendations for this Committee as to how we might be able to deal with this issue, because it certainly raises some civil liberties issues.

Mr. HOROWITZ. Senator, we have looked at the issue. In fact, to Senator Baldwin's last question, we just completed our fifth review of the FBI's management of the Terrorist Watch List. There are obviously multiple agencies that deal with the Watch List and getting people's names on the No Fly List. We have the FBI portion of it, obviously. IG Roth has the TSA's portion of it. And, the intelligence community has other portions of it.

But, in our most recent audit, we found that there were still both issues as to the FBI's cases and how they were getting names both on the list that should be on the list and getting names off the list that should not be on the list. And, we addressed and have in our most recent report the public version—there is a redacted classified version that the members, obviously, have full access to—that shows how the timing of the removals—speaking specifically on removals now—has improved, but how there are still issues about how promptly the FBI is addressing removing individuals from the Watch List. We made a recommendation to the FBI that it evaluates further its timeliness metrics and figures out how it can more timely remove people from the Watch List when the cases are closed, the reviews are closed, when they otherwise learn that those individuals should not be on the Watch List.

Senator PETERS. Great. Thank you.

And, Mr. Roth, good morning. I wanted to followup a little bit on this, as well. I also want to say we share the same law school, a graduate of Wayne State University in Detroit, both undergraduate and law, so it is great to have you here in this position here in Washington. And, so, you are certainly very familiar with the dynamics in Michigan, as well, from being there.

Now, I have heard complaints from Customs and Border Protection, or that Customs and Border Protection agents have been consistently asking some of the Muslims in Michigan about their religious practices and affiliations as they cross the border from Detroit-Windsor, which is a very active border crossing, as you know. Has your office investigated some of these complaints, and can you talk about some of your office's investigations into racial profiling at the DHS and share what you have found.

Mr. ROTH. We have not looked at that specific issue, Senator, but we certainly would be pleased to do so. Part of what we do is a fair-



ly fulsome civil rights—civil liberties practice that we share in conjunction with the Office of Civil Rights and Civil Liberties within DHS. It is something that DHS takes very seriously. But, unfortunately, not having done work in that specific area, it is difficult for me to comment.

Senator PETERS. Very good.

Mr. Horowitz, back to you, your office has a number of oversight efforts that are related to the Bureau of Prisons (BOP). And, specifically, if you could share any findings that might inform Congress's decisions related to the exploding price tag. We are now spending nearly \$7 billion within the Justice Department's budget for the Bureau of Prisons. If you could share with this Committee some of your findings or suggestions for improving the Bureau of Prisons inmate and custody management programs, as well as things related to prisoner reentry, which is also a very important aspect if we are going to reduce cost.

Mr. HOROWITZ. Certainly, Senator. We have done a fair amount of work in that area. It is among our top challenges that we have put in our two most recent top management challenges report. As you note, it is about a quarter of the Justice Department's budget. It is an ever-growing percentage of the budget. And, it is beginning to crowd out other priorities for the Department.

We have done work to look at the Bureau of Prisons handling of its Compassionate Release Program, its handling of the Treaty Transfer Program, both of which Congress has authorized the Bureau of Prisons to use to deal with inmates who meet the qualifications in those programs. We are currently looking at the growth in the aging inmate population at the Bureau of Prisons, which creates significant issues, including the fact that the Bureau of Prisons is now spending \$1.1 billion on inmate health care costs. That is about 3 percent of the Justice Department's budget is going to inmate health care, and a growing number, as well. So, we are looking at that, as well.

On the reentry side, we have looked consistently at halfway houses and the operation of halfway houses. We are looking and considering how to look further at reentry, whether the programs are, in fact, working, and what the metrics show with regard to their success rates.

Senator PETERS. Do you have adequate data to perform that analysis, particularly when it comes to reentry programs? Are there data sets out there that you can access?

Mr. HOROWITZ. That is actually one of our biggest challenges, Senator, that you have just touched on, which is that there is not reliable data that we have found that shows recidivism rates for some of these programs, success rates for education, training, drug treatment programs, and when we are doing reviews, we often have to do the metrics ourselves—in a very rudimentary way, but to try and do some metrics around that.

Senator PETERS. Right. Something we definitely need to do, then.

Mr. HOROWITZ. It is critical. If you are going to do performance-based reviews of government programs, you need strong metrics and underlying data to do that. That is one of the biggest challenges we have in the prison area.

Senator PETERS. Great. Thank you so much. Thank you.

Chairman JOHNSON. Thank you, Senator Peters.

Again, I want to acknowledge the good work that Senator McCaskill has done on a bill that I hope we can introduce. She has been working with Senator Grassley. I have been very supportive. I hope this Committee, on a very bipartisan basis, can be supportive. It addresses almost all of the issues that you are addressing here, so I will give you an extra minute—

#### OPENING STATEMENT OF SENATOR MCCASKILL

Senator MCCASKILL. Thank you, Senator.

It is always terrific to have you here. I think all of you know the affection and affinity I have for your community. As a former prosecutor and a former auditor, I understand both the power you have and the limitations of the power that you have. That is why we have tried diligently in my office to not only use your work to inform what we do in the Senate, but also to try to do everything we can to support your community.

I think the legislation that we have worked very hard on is getting to a point that it is really good, because I think we can address the data matches. I think we can address the challenges that you have. And, frankly, Mr. Horowitz, nobody understands better than a State prosecutor the frustration you have with the FBI. [Laughter.]

This is a cultural issue within the FBI about sharing information, even with local police and local prosecutors. I think we can really address a lot of these issues.

I think, also, providing an appropriation for CIGIE is important. I have been very frustrated with the amount of time the Integrity Committee has taken with some of the investigations. Particularly the investigation into Mr. Edwards at DHS, where we were anxious for CIGIE to complete the work as we were trying to put pressure to clean up an office that is so vitally important to our Nation. Also, the National Archives IG. Both of those investigations languished.

I want to talk a little bit today—I really appreciate, Mr. Roth, your characterization first of the importance of independence as the coin of the realm, and second, the importance of transparency. Let me clarify the different kinds of Inspectors General we have. I do not think a lot of people understand that the two kinds are completely different animals.

We have the Presidentially appointed Inspectors General that must be confirmed by the U.S. Senate. This provides more independence in terms of appearances than the other kinds of IGs we have, which are the Designated Federal Entity IGs. They are not appointed by the President. They are not confirmed by the Senate. They are, in fact, appointed by their agencies. We have worked at reforming this because, on its face, that is a problem. Now, I do not think people realize that we have more of the Designated Federal Entities (DFEs) than we have of the Presidentially appointed IGs. Correct me if I am wrong, but I believe we have 34 Designated Federal Entities and only 30 Presidentially appointed.

So, let me ask you this question. Is there a list of the salaries of the Designated Federal Entity Inspectors General?

Mr. HOROWITZ. I believe, Senator, it would simply be that you would have to look through the public records——

Senator McCASKILL. It is not there.

Mr. HOROWITZ [continuing]. But there is no——

Senator McCASKILL. It is not there.

Mr. HOROWITZ. There is no list that I am aware of.

Senator McCASKILL. Well, would CIGIE not be in a position to request that information? If we are going to talk about transparency, we have been trying to get this information——

Mr. HOROWITZ. Right.

Senator McCASKILL [continuing]. And guess what? All this talk about transparency among the IG community, guess who does not want to tell us how much money they are making? The Inspectors General in these Designated Federal Entities.

Now, I am a cynic, too, Mr. Roth. Based on my years of experience doing what you do, I started out a cynic. I am distrustful of an Inspector General community that does not want the public to know how much money they are making. I would like your ideas on how we can facilitate getting the information about the annual salaries of the Designated Federal Entity IG—the majority of the Inspectors General that are out there.

Mr. HOROWITZ. I will followup promptly on that, Senator.

Senator McCASKILL. Would you be surprised to find out that there are Inspectors General in some of these small agencies that are making twice as much as the four of you?

Mr. HOROWITZ. I would not be surprised. I actually know that is an issue in the Inspector General community.

Senator McCASKILL. Is that not a scandal?

Mr. HOROWITZ. I think it is a significant issue.

Senator McCASKILL. Well, why would it not be a scandal? Why in the world would an Inspector General at the Farm Credit Agency be making twice as much as the Inspector General at HHS?

Mr. HOROWITZ. I do not know how the pay scales have worked out. I do know that for the Presidentially appointed Inspectors General, there is also apparently a range of salaries, given some of the exceptions that have been put into statutes over the years.

Senator McCASKILL. What percentage of the IGs contract out their financial statement audits?

Mr. HOROWITZ. I do not know the answer to that. I can check on that——

Senator McCASKILL. That would be something I think we need to find out. I am particularly interested in the Inspectors General that are in the Designated Federal Entities. What percentage of them contract out their financial statement audits? For a bunch of them, that is just almost all they do. If they are getting paid twice as much and they are contracting out the financial statement audit, Houston, we have a problem, do we not?

Mr. HOROWITZ. Well, I would certainly want to know what the facts were there, Senator.

Senator McCASKILL. Do you keep track of the work product of the Inspectors General? And, by the way, for these smaller Inspectors General, is it not true that they are not getting peer review on a lot of their work because they are not adhering to the Yellow Book?

Mr. HOROWITZ. I can followup on that, Senator, and talk with our Audit Committee about—

Senator MCCASKILL. Well, do you not have a pilot program looking at whether or not CIGIE can, in fact, begin peer review on these reports that they do not adhere to the Yellow Book standards? For the record, the Yellow Book standard—you all know, that is, in fact, the government approved auditing standard. That is the bible for a government auditor. Because these are so small, a lot of these DFEs, they do not have the capability of actually adhering to Yellow Book standards. And, if you do not adhere to the Yellow Book standards, you cannot get peer review, is that not correct?

Mr. HOROWITZ. We are looking at the issue, and I will followup. I have to say, 6 weeks into the job as CIGIE Chair, I do not know the answer to that off the top of my head.

Senator MCCASKILL. OK. Well, I believe there was a pilot program about looking at how CIGIE could help with peer review on these reports. If you are not doing very many, and you are making twice as much as the IGs in the largest agencies—I mean, look at Social Security. Imagine the work you need to be doing. What do you make, Mr. O'Carroll? I think you make about \$170,000 a year?

Mr. O'CARROLL. That is correct, Senator.

Senator MCCASKILL. Yes. So, I am trying to figure out what is rotten in Denmark here, and I think, Mr. Chairman, we need a whole hearing on what has happened. The other part of this that is incredibly troubling to me is that in an effort to do away with bonuses for this IG community, we inadvertently put them in a situation where their salaries are now adjusted according to the people who work at their agencies.

So, let us say we have something like the Federal Reserve, and the head of the Federal Reserve, the Board gives them a bonus. Well, guess what happens? The IG gets a bonus, because he is hooked or she is hooked to the salary of the agency head that they are overseeing.

So, let me see if I get this straight. You have an Inspector General who makes what the boss makes if the boss gets a bonus. Now, how likely is it that the Inspector General will expose that the boss has problems? Guess whose salary is going to be impacted? The salary of the Inspector General. Now, that is absolutely unconscionable within an auditing community. I would have to sit and think, "now, if I expose the head of this agency for wrongdoing, they are not going to get a bonus, And if they do not get a bonus, I do not get a salary increase. I do not go to \$320,000 a year, or \$270,000 a year."

This is a huge problem, and I would like you, as the head of CIGIE, to report back to this Committee and to the Chairman about how you would propose us dealing with what is clearly an ethical problem within the Inspector General community.

Thank you, Mr. Chairman.

Chairman JOHNSON. Thanks, Senator McCaskill. All good questions. Maybe we can address that in this legislation that we are about ready to introduce. Senator Booker.

### OPENING STATEMENT OF SENATOR BOOKER

Senator BOOKER. Thank you very much, Mr. Chairman, and I want to thank the gentlemen who are before me right now. I know the work you do is essential to the strength of our Government, and it truly is, in my opinion, righteous and in accordance with the goals of the Committee that is assembled here.

I just want to jump right in, in the limited time that I have, and Mr. Horowitz, I would love to have the opportunity to talk to you, if you would ever one day want to come to my office, because this line of questioning runs very deep for me.

So, first and foremost, I imagine all the Inspectors General oversee policy procedures, even human resource policy procedures, right?

Mr. HOROWITZ. Correct.

Senator BOOKER. And, then diversity, which is a big issue for me, being down here for all of about 16 months, this place is not that diverse, and I am talking about the Senate, but I would love to know about employment practices, specifically within the FBI. We had a courageous statement by the head of the FBI talking about issues of race and law enforcement. But then today, and I will put this in the record,<sup>1</sup> we talk about the declining rates of blacks and Latinos within FBI agents. That is very troubling to me when it comes to the investigations that they are doing and often the prosecution of the so-called war on drugs and its massive disproportionate impact on blacks and Latinos.

So, I am wondering if your office does a lot of focus on this area of diversity within the ranks of FBI agents as well as the other agencies under your jurisdiction.

Mr. HOROWITZ. We have not issued any reports specifically on the question of the diversity rates. We have done work on various hiring, promotion, and removal practices and allegations we have received about how those were undertaken and whether they were fairly undertaken. But, we have not done the broader question—

Senator BOOKER. Well, I would strongly encourage you to do that. Here we are in a Nation right now where you literally have had demonstrations coast to coast, north to south, about law enforcement practices. And, one of the things we have seen, for example, in Ferguson is that the diversity of the police force was an issue.

Mr. HOROWITZ. Mm-hmm.

Senator BOOKER. And, so, if we have declining rates of minority officers in the FBI, that should raise a concern, at the very least, and especially when the head of the FBI himself is talking about that this is a problematic issue within race and law enforcement.

And, along those lines, I was surprised by the Senator from Michigan when it comes to issues of reentry and issues of recidivism and that the data that you are trying to find really is not there and you are trying to piece it together in what sounds like a less than scientifically sound manner.

Mr. HOROWITZ. What we have tried to do is take a representative sampling of the data that we can get and use that, but it is clearly

<sup>1</sup> The information submitted by Senator Booker appears in the Appendix on page 82.

not a large-scale effort that you would want to have ready and available when you are looking at these things.

Senator BOOKER. And, so, we have no objective measures within the Bureau of Prisons about how one warden might be doing in terms of recidivism rates versus another warden holding constant, obviously, crimes and backgrounds and the like, correct?

Mr. HOROWITZ. I am not aware of that.

Senator BOOKER. And, so, that is particularly problematic, then, when it comes to the issue of private prisons. If there are no standards whatsoever for empowering people that are in prison not to come back to prison, there is a perverse incentive, a profit model, so to speak, for private prisons and private halfway houses to keep that, not virtuous, but vicious cycle of people coming back in, correct? Would they not have a perverse incentive not to do what is necessary to stop the rates of recidivism?

Mr. HOROWITZ. There is certainly a risk, Senator, of that, and, of course, the flip of that is you would want to know what programs and practices are working to put best practices in place in contract prisons and, frankly, across all of the Federal Bureau of Prisons institutions.

Senator BOOKER. Absolutely. And, are you conducting investigations of these private prisons and private halfway houses? I have a high suspicion of people that are in charge of imprisonment of folks, disproportionately minority, disproportionately poor, and that have some profit incentive to see more people coming into their institutions.

Mr. HOROWITZ. And, what we are doing right now, we have two reviews going on in private contract prisons. One, we are looking at specific prisons and how they are handling safety and security issues. We are looking at the broader question, as well, as to how the Bureau of Prisons is overseeing private contract prisons. The problem with the question of how are they doing on recidivism rates is we do not have the data to be able to do that across dozens of institutions with our smaller audit staff.

Senator BOOKER. So, in other words, this is an important line of inquiry, but you are telling me you just do not have the resources or staff to understand what, to me, is a fundamental aspect of our country, this idea of liberty and freedom, and we seriously have a problem within our criminal justice system. But, you are telling me you do not have the staff or the resources to conduct an adequate study.

Mr. HOROWITZ. We would not be able to do a broad-based study like that, and one of the reasons why we have put it on the top management challenges for the Department this past year is the need for better performance-based metrics. This is one of the examples of that. If you are going to run government operations with 200,000 inmates, which is what right now exists in the Federal Bureau of Prisons, 19 percent of them in private contract prisons—all of those, by the way, are non-U.S. nationals, that is where the Bureau of Prisons is housing them, in contract prisons—you would certainly like to have the kind of data that would allow you to look at who is running the best contract prisons, who is running the best BOP institutions.

Senator BOOKER. And, then, the last thing, and very quickly for me, we have a terrible problem in this country where people who—for example, we have the last three Presidents who have admitted to smoking marijuana, but the people who actually are arrested and incarcerated for use and sale of marijuana, even though there is no difference between the races, are disproportionately Latinos, African Americans, and poor people. Is this something that you are looking at, of why we have a selective use of the justice system that disproportionately impacts the poor and minorities?

Mr. HOROWITZ. We have not undertaken an audit or review at this point of that area. I do know from my prior time on the Sentencing Commission, the Sentencing Commission has looked at some of those issues in some of its prior work, but it is certainly an area of interest to us—

Senator BOOKER. So, we can talk about this.

In the last 10 seconds I have, Mr. Roth—and I am hoping we can followup on it—you said that the potential shutdown of the DHS, the words you used, it would create budget instability and make it difficult for coherent management. Can you elaborate on that briefly?

Mr. ROTH. Sure. Since October, we have been on a Continuing Resolution (CR), which means we do not know from week to week what our budget situation is going to look like. So, what happens in a Continuing Resolution situation is you basically get an allowance that allows you to pay your light bill, pay your rent, pay the personnel that you have on board, and really nothing else. You are prohibited from engaging in any kind of long-term planning, any sorts of management initiatives that you believe would improve the Department. So, that is the case, of course, from October to this point.

After Friday, of course, if there is a shutdown, then even the administrative portion of DHS will go away. Certainly, the oversight part of DHS will go away. And, people will engage in jobs necessary to save life and property and do nothing else.

So, it is a significant challenge for the Department. As an oversight entity, we see what occurs during a Continuing Resolution and then, certainly, a shutdown, which is you cannot improve the Department. You cannot make the Department better because it is not possible to put programs in place that will do so.

Senator BOOKER. I appreciate the indulgence of the Chairman. And, so, you are saying even a CR is a threat to our national security. It undermines our agency.

Mr. ROTH. Absolutely. I believe that Secretary Johnson said it is like driving a car across country where you have a gallon of gas and you are not sure where your next gas station is going to be. It is simply a stop-gap measure by which you are running the Department.

Senator BOOKER. Thank you, Mr. Chairman.

Chairman JOHNSON. Thank you, Senator Booker.

Let me just respond a little bit. I think, as I have been trying to do this Committee, is concentrate on shared purposes, shared goals, again, that mission of enhancing the economic and national security of America. That is something we share. I think we all agree that we should absolutely fund the authorized, the legal, the

essential elements of the Department of Homeland Security. I think we all want to do that, if we concentrate in that area of agreement. There is certainly an aspect of this funding issue that we do not agree on. Let us set that off to the side. It is in the courts now.

This could be solved tomorrow if President Obama and Secretary Jeh Johnson said, OK, let us let the courts decide this. Let us fund those essential, the legal, the constitutional, the authorized activity of DHS. You would not be in this bind, Mr. Roth. So, again, I hope that we can do that. It would have been very helpful if we would have at least voted to get on the bill so we could start offering amendments, so we could open up the process, so we could have the debate, the discussion, set up a process where we could find some measure of common ground, some kind of compromise. That has not happened. That is regrettable. I hope we can do that in the future. Senator Ayotte.

#### **OPENING STATEMENT OF SENATOR AYOTTE**

Senator AYOTTE. Thank you, Mr. Chairman. I want to thank all of you for being here.

Mr. Horowitz, in your testimony, you pointed out the difficulties caused by the failure to nominate and appoint the Inspectors General. Too often, you have many vacancies. So, when you have those vacancies, you cannot do the oversight that we depend on you with in the agencies.

Last Congress, I had joined with Senators Boozman and Shaheen to introduce a bill called the Verifying Agency Conduct and Needs Through Inspectors General Act, recognizing the important work you do. And, really, what we are trying to get at is to require the nomination of a person to each Inspector General position within 210 days. Now, that is a huge length of time. I think these nominations should be made much sooner than that. But, basically, to put an outside window on it, to have them made within a certain time, and if not, the authority would be transferred to the Congress.

So, can you explain to me what degree are Inspectors General Offices impacted by the long-term vacancies and how does that undermine what you are trying to do in terms of the oversight function that is so important for the Inspectors General. And, you identify a number of large agencies without permanent IGs. Is this a lack of where does the issue fall? Can we not find the talented and skilled people? Is it that people do not want to come and be Inspectors General? Or, is it the end and it just takes delays in terms of the Administration and nominating, so we can understand how to get at this.

Mr. HOROWITZ. Senator, I think there are probably several different issues that come up when you have an Acting Inspector General, particularly for a lengthy period of time. Of course, the staff stays, and they are very dedicated. They keep pushing ahead on the work and get it done. But, we are constantly facing challenges. We are constantly facing issues, as each one of us have testified today, to our independence, to our ability to get the job done. And, what comes with a confirmed position is the ability to stand up and know that you cannot be removed other than by the President.



Senator AYOTTE. It gives you the protection to speak truth to power, basically.

Mr. HOROWITZ. Correct. And, that is a challenge for any Acting Inspector General. The best of them, and I had a predecessor who served in that role for 15 months and she did an outstanding job. But, everybody in the organization was waiting to find out who is going to actually lead the organization.

Senator AYOTTE. So, where are things getting held up? Can you help us understand? Is it that we cannot attract people to do this, or is this delays in Administration? Is it a delay in Congress? I just think it is important—or, is it a combination, and how do we cut through this?

Mr. HOROWITZ. I think it is a combination of issues. I have been Council of IGs Chair now for 6 weeks, and one of the first things I did was meet with the Presidential Personnel Office to talk about moving vacancies, and we have sent over resumes of candidates, a number of individuals who are interested in positions, who are very capable. I think the process needs to be sped up on the selection side, on the vetting side, and on the confirmation side. I think you see all three at various times.

My predecessor, Glenn Fine, announced he was leaving in mid-2010, gave 6 months' or so, I believe, notice, and I was not nominated until the end of July, July 31, I think it was, of 2011.

Senator AYOTTE. Wow.

Mr. HOROWITZ. And, then I waited 8 months to get confirmed.

Senator AYOTTE. Wow.

Mr. HOROWITZ. So, you have a buildup in each of the processes, and I had no opposition when I got confirmed. So, I think there are at each stage—having gone through the vetting process, having waited for the nomination, I think I can say that at each of the stages, there could be greater effort to move these.

Senator AYOTTE. Excellent. Well, we have one piece of legislation, but this is really important, because the work you do is very important to the agencies and the oversight and we need you to be in there, have that confirmation so that you can feel free to speak without, obviously, anyone either in the agency or outside the agency trying to remove you. So, I appreciate it.

I wanted to ask Mr. O'Carroll, your testimony on improper payments, it is sobering, really, with \$8 billion in 2013, including more than 9 percent of all Supplemental Security Income, SSI program, payments. Unfortunately, we know that it is not just SSI payments that we are dealing with improper payments. There are some other large programs.

For example, I have been focusing on the risk of improper payments in the Earned Income Tax Credit (EITC) and the Additional Child Tax Credit (ACTC). And, according to a 2014 Inspector General report, the Internal Revenue Service (IRS) estimates that \$14.5 billion, or 24 percent of EITC payments made in 2013, were paid in error. And for the ACTC, Additional Child Tax Credit, the estimates are a potential improper payment rate for 2013 between 25 and 30 percent, which is staggering. The problem is, is that this is a lot of money and then it does not go to those people who perhaps deserve it and goes to people who do not, and nothing gets my constituents more upset than that, as you can imagine.

So, you mentioned that the Social Security Administration has implemented 86 percent of your recommendations. That seems high, frankly, compared to what we hear about other agencies, obviously, where we see that very few recommendations get implemented. So, can you describe the future impact of the high rate of adoption of your recommendations. What kind of feedback are you getting from leadership in getting them to adopt these recommendations? And, are there actions we can take to drive other agencies to adopt more IG recommendations, because this improper payment issue, I mean, this is one where we are just throwing money after money. It is not right. It is not fair. And, it is billions of dollars that could be better put to use.

So, any thoughts you have for us on how do we get the agencies to adopt it? What can we do to be more effective in helping you implement these recommendations? And, how do we drive other agencies to do the same?

Mr. O'CARROLL. I will start at the top in terms of improper payments, and you identified it well, that my office is representing the Council of IGs on improper payments, in general. So, we are dealing with OMB. We are dealing with Congress. And, we are identifying \$106 billion worth of improper payments every year—

Senator AYOTTE. A hundred-and-six billion dollars?

Mr. O'CARROLL [continuing]. Across the government—

Senator AYOTTE. Another reason we need to get the IG positions filled sooner, right?

Mr. O'CARROLL. Yes. So, we are identifying that, and we are noticing—and this is kind of what you are saying, is that through the transparency of it, the accuracy is improving. So, since we have been reporting improper payments on it originally, it was about 2009, it was about 94 percent payment accuracy in government, and that has now gone up to about 96.5 percent. And, I think a lot of that is because of the transparency and everybody having to report what your improper payments are. And, just as you mentioned, the problem agencies, HHS has a large amount of improper payments that are causing problems, much like IRS, and I think those reporting on it is focusing the attention.

Kind of an interesting one on the Earned Income Tax Credit that you were talking about. We have just done audit work with Social Security in terms of people that are claiming earnings so that they can get the Earned Income Tax Credit, but that disqualifies them for SSI, or Supplemental Security Income. So, they disclaim the wages so that they can get SSI, and at the same time, they are still getting an Earned Income Tax Credit. So, we are working very closely with the IRS—

Senator AYOTTE. They go hand in hand.

Mr. O'CARROLL. Yes. And, kind of an easy example on that one, which is very frustrating, is that the Department of Treasury sends the same checks to the same people. So, they will be getting a benefit check from one agency and an Earned Income Tax Credit from the other—

Senator AYOTTE. And are they talking to each other?

Mr. O'CARROLL [continuing]. And they are not talking to each other.

Senator AYOTTE. Oh, you are kidding.

Mr. O'CARROLL. So, that is why I think the identifying of improper payments is very important, to plug gaps like that in government.

Senator AYOTTE. Well, I know my time is up, but any thoughts you have for us, how we can help that. When we do not have Treasury and HHS, or Social Security and Treasury, or any of these talking to each other, then that is a big problem. So, any thoughts you have on how we can better help you make sure that we are not sending these multiple checks in a situation that would be inconsistent under the law would be tremendously helpful. I really appreciate your work. Thank you.

Chairman JOHNSON. Thanks, Senator Ayotte.

Senator Baldwin, if you would like to refresh Mr. Roth's and Mr. O'Carroll's minds in terms of the three questions you would like them answering.

Senator BALDWIN. Thank you.

So, in a scenario where you have an audit or an investigation conducted by the OIG that recommends changes at a Federal facility, a local one, an entity or an office, in our case in Wisconsin, a hospital, should the Federal officials in Washington of that agency who are charged with overseeing local facilities be made aware of those recommendations? That is No. 1.

No. 2, how does the IG's Office ensure recommendations are being implemented effectively?

And, No. 3, what role do transparency and communication play in ensuring compliance?

And, before I get to Mr. Roth and Mr. O'Carroll, I wanted to go back to Mr. Linick on that first point, in particular, that if there are recommended changes in an audit or investigation, should those with oversight responsibilities, be informed?

Mr. LINICK. So, the analogy in the Office of Inspector General for the Department of State, we do not have local offices, but we have embassies, approximately 280 of them all over the world, and we inspect them. When we do inspections or audits, we do notify the senior leadership of the outcome of those inspections and audits, so they do not just go to the embassy, but they will go to the regional bureau which is in charge of that particular embassy and they also find their way to Washington, as well.

Senator BALDWIN. Mr. Roth.

Mr. ROTH. Yes. Certainly, if we are looking at a local office, many times, our recommendations will not be addressed to the person running that local office, but those recommendations will be then addressed to, for example, the Commissioner, if it is the CBP, or a program manager within Customs who has the authority and the ability to effect change. So, in many ways, is the recommendations that are addressed to people other than the folks who are at that locale.

Second, to ensure implementation, DHS has, I think, a very proactive approach to audit liaison and audit resolution that has dramatically changed, for example, the number of open recommendations that we have, and it is run by the Under Secretary of Management, but ultimately chaired by the Deputy Secretary. So, there is a certain high-level engagement as to what is occurring with these open recommendations.

And, the way we ensure compliance of open recommendations is that we will keep them open until we get sufficient evidence under our auditing standards to believe that the recommendation has been satisfied. Oftentimes, that is some sort of documentation or other kinds of assurances that they have taken our recommendation and they have implemented it in a way that makes sense to us. In certain cases, we will go back, as Mr. Horowitz has talked about, and do a compliance review to actually go back on the ground and figure out whether or not those recommendations have been complied with.

And, then, last, we have, of course, what I call the bully pulpit, the transparency and the communication that I think is critically necessary to ensure compliance, and we have done that in a number of occasions and I think that tends to focus the mind, as well.

Senator BALDWIN. And, Mr. O'Carroll.

Mr. O'CARROLL. Senator, one thing that works with us in terms of what you are asking on the local level, if we identified something, how would it be fixed—the way we work with the Social Security Administration is that our audit liaison is centralized in their headquarters. So, any recommendation that we are make to any component of SSA rises to the management level so it is overseen by all of SSA.

I guess another example of what we do on that is, one, we are, of course, publishing it. It is going on our website. It is going out to all of our customers whenever we issue an audit. Also, one of our oversight committees asked us every 6 months to provide a report on what recommendations we have made, that have not been adopted by the agency. So, that is good for oversight.

Another thing that I do, is I attend once a month—we are not considered part of the Commissioner's staff, so I keep my independence, but once a month, I go to the executive staff meeting, and I report out to all the executive staff of SSA, about audits that are of importance. These are the ones that we have recommendations on. These are the responses we are getting back from Social Security. And, usually, it will be addressed there in front of all the peers of each of the components. So, if one component is lagging that is going to be brought to the attention of all their peers.

Another thing that we do is the trust but verify part of it. After we make the recommendations, we go back to see if they are enacted, and if it is problematic we will do another just to see if what they told us what happened when they corrected the problem, if it really happened.

An easy example of that one would be SSA, with all of its records and information. We were talking earlier about the Death Master File. One set of records within SSA is keeping track of who all the people are, and whether they are alive or dead, and then another system keeps track of the payments that are going out, and sometimes the two systems are not talking to each other. So, one database says you are dead. The other one says that you are getting benefits. So, we have made recommendations on that. SSA prioritizes it, and says that they are going to fix it, and every 3 years we go back. We do another audit and say, we have identified these number of people that are listed as dead on one file and alive on the other one and bring it to the attention of everybody.

And, it works quite well that way.

Chairman JOHNSON. Thanks, Senator Baldwin.

Mr. Linick, has Secretary Kerry asked you to open up an investigation or inspection of the closing of the Yemen embassy?

Mr. LINICK. He has not asked me that.

Chairman JOHNSON. Is that something just on your own initiative, something you are going to look into?

Mr. LINICK. Well, I cannot really talk about investigations and so forth. Those are typically confidential matters. But, we initiate our own investigations. The Secretary does not direct us to do any of that.

Chairman JOHNSON. OK. Mr. Horowitz, in terms of subpoena power, is it basically true that you do get push-back from the Department of Justice in terms of your ability to subpoena people that are no longer employees of the Federal Government?

Mr. HOROWITZ. My understanding is last year when this issue came up, that the Department of Justice objected to the effort by Congress to give us that authority, the concern being that we somehow might interfere with Department of Justice investigations. To my mind, that can easily be addressed. From my former time in the Criminal Division at the Justice Department, we dealt with immunity issues and similar issues regularly, coordinated among 94 U.S. Attorneys. It is very doable.

Chairman JOHNSON. Well, let us easily address that, then. I mean, we would really like to, because I think that is a very appropriate power you need to access the information you need to do your investigations and your inspections, so let me work with the Committee on that.

Mr. HOROWITZ. Absolutely.

Chairman JOHNSON. My final question, just as best practices, Mr. Linick, you talked about your Management Alerts. I was intrigued, reading your testimony about that. It sounded like a really good idea. Is that only in your Office of Inspector General, or is that happening throughout all the Inspectors General? I will ask you, and then I will ask Mr. Horowitz, as head of CIGIE.

Mr. HOROWITZ. Certainly, in my office, I have issued two memos during the course of audits where we have found issues that I thought needed immediate attention. One of them, we have issued involving BOP's purchase of X-ray machines, where we found serious questions about the value of those X-ray machines. We, obviously, thought it imperative, once we found that problem, to alert the leadership, and so we did that. And, we do use that when we find it is necessary to do so.

Chairman JOHNSON. But, again, in what way does the community, the IG community, share those best practices? I mean, is it through CIGIE? I mean, do you have get-togethers, conventions? I mean, is that a concerted effort to find out, hey, this is really working great in our office. Everybody else ought to be doing something similar.

Mr. HOROWITZ. We do. We do it both through the individual committees, so, for example, in the Audit Committee, they would look at, in their peer reviews and other discussions, best practices on the audit side, similarly on the investigation side. And, then, each

year, we have a 2-day conference where we get together as a community to share practices across our community.

Chairman JOHNSON. Does anybody else want to add to that?

Mr. ROTH. Yes. We have done these Management Alerts, as well, sometimes in conjunction with a long-term audit. We do not want to wait until the audit is completed, because, for example, there is a significant management challenge that ought to be fixed immediately. So, those are public and we will put them on the website.

For example, we were doing an audit of our—DHS's warehouse programs, whether or not those ought to be consolidated, and we found a serious health and safety issue that Immigration and Customs Enforcement, candidly, tried to hide from us. We were able to find it and we were able to issue a Management Alert, and as a result of that, a problem that had existed for a number of years was fixed within weeks.

So, it is a highly effective tool. Again, it is that disinfecting sunlight, sometimes, that makes a big difference.

Chairman JOHNSON. Mr. O'Carroll, it looks like you want to press the button there.

Mr. O'CARROLL. Yes, Chairman. I agree with that. It usually takes about a year for an audit. So, early on in an audit, if we identify a systemic problem or an issue that if it was not corrected immediately would have a major effect on the program, we do those type of alerts.

And, if we come up with an issue that does not even require an audit, but it is something that needs attention, we will do an alert. So, an easy example on that would be the Disability Trust Fund for Social Security. On that one, we have done reports on the solvency of that Trust Fund and our concerns about it and we give it to our stakeholders, to Congress, and show that we are not asleep at the switch and we realize there is a problem there that needs to be addressed. So, we use alerts often.

Chairman JOHNSON. Before I turn it over to our Ranking Member, I just want to give each of you the opportunity, is there something during the questions, during this hearing, an issue raised that you were not able to address that you want to quickly address now? I will start with you, Mr. Horowitz.

Mr. HOROWITZ. I cannot think of anything, Mr. Chairman.

Chairman JOHNSON. OK. Mr. Linick.

Mr. LINICK. The only thing I would add to the question from Senator Baldwin about "What can Congress do to help with the recommendations being implemented," through our Management Alerts, the three that we issued last year, the 2015 appropriations omnibus bill contained explanatory language requiring the Department to respond to our recommendations. That was very helpful in terms of enforcement. So, I just wanted to note that additional point for the record.

Chairman JOHNSON. OK, great. Mr. Roth.

Mr. ROTH. I am good. Thank you.

Chairman JOHNSON. Mr. O'Carroll.

Mr. O'CARROLL. One thing that Senator McCaskill brought up, just to give a little clarity on, was the contracting out of financial statement audits and her concern on it. And, I have to say, in our case, we do contract out the financial statement audit for Social Se-

curity. What we do, though, is that we work hand-in-glove with whoever gets the contract.

But, one of the big issues that we are up against is that so much now is IT-driven in terms of the management of an agency. When you think of the largest social insurance program in the world and \$2 billion a day going out, information security at SSA is so important, and we just do not have the expertise and are not able to be hire the best and the brightest every year to be taking a look at what deficits or weaknesses SSA has in their systems. So, we contract that out. Usually, whoever we are contracting with is going to have significant resources to be taking a look at those type of vulnerabilities. And, then, we work closely with them. So, there is an advantage to contracting for the financial statement audits.

Chairman JOHNSON. Coming from the private sector, we all contract out our auditing, and as long as you maintain that independence—I think Senator McCaskill, her point was you have this Inspector General. They are supposed to be doing the inspecting. Why do we not use the resources we have? But, there are going to be costs somewhere, and I do not think that is per se a problem myself. But, it is worthy in terms of looking into. Senator Carper.

Senator CARPER. Thanks, Mr. Chairman.

I am going to ask a couple of questions, but before I do, I have one question I am going to ask of each of you and I am going to ask you to be thinking about this question. It is an easy one. You have given us—we have asked you different ways—several of us have—what can we do to help you. What can we do to bolster you and strengthen the ability of you and your teams to do your job as watchdogs.

I am just going to ask each of you to give us one idea. If we only did one thing that you would have us to do to help support you, it could be writing the letters to get more IGs out there, the Administration nominating more people, or getting these agencies that have five or six, have not had an IG for a while, it could be that. It could be something else. But, just be thinking about one, if you can only do one thing, do this for us. It will help us a lot.

OK, but while you are thinking about that, I will go back to something, and I apologize for being out of the room. I was on a teleconference call with my Governor and a bunch of other people and sometimes my day job gets in the way from this job here, so thank you for letting me be away from my post for a while.

But, as Senator McCaskill briefly mentioned, several years ago, the IG for the National Archives, Paul Brachfeld, was placed on administrative leave while CIGIE and the Office of Special Counsel investigated allegations of misconduct. It took nearly 2 years until these investigations were fully resolved, and during that 2 years, the Archives was deprived of a permanent Inspector General, as you will recall. Mr. Brachfeld was stuck waiting in limbo on administrative leave.

Maybe I will direct this to you, Michael, but as the new Chair of the Inspector Generals Council, I just would like to hear from you, your analysis of what went wrong with the Archives investigation and what steps you and others are taking to ensure that such a situation does not happen again, certainly on your watch.

Mr. HOROWITZ. Certainly. I think there are two issues. One is to ensure that the investigation by the Integrity Committee happens within a timely manner, or happens in a timely manner. And, what I have been talking to the FBI, which chairs the Integrity Committee, and talking with members of the Council of IGs, is how do we put in place timeframes for conducting the reviews and investigations. I think that would help to better manage the process.

I think we have to take other steps, as well, frankly. The Integrity Committee process needs some revising. It has a Chair that is at the FBI, managing a process with IGs, Special Counsel, Office of Government Ethics, trying to manage another IGs office that is doing the investigation, and I think there needs to be better accountability for all the participants in that process. I look forward to working with the Committee on the statutory issues, but also with the FBI and the members of the Integrity Committee, on the procedural issues that are involved. So, I think we can do both.

In terms of the placing an IG on administrative leave, whether a Presidential or non-Presidentially appointed IG, I think the IG Act needs to address that issue. We are making a recommendation as a community of IGs that that needs to be considered. There are removal procedures, but there are not administrative leave procedures in the IG Act. They need to be clearly defined. There need to be clear bases for when that can occur, and for how long it can occur, and under what conditions can it occur, because that was a concern for many of us, that an IG could be put on administrative leave indefinitely, if you will. That is not good for the agency. That undermines the independence of Inspectors General. And, that undermines the confidence of this Committee and the public at large.

Senator CARPER. All right. Thank you. When might we look for those recommendations?

Mr. HOROWITZ. I am working now with our membership and the FBI on proposing new procedures, which is what we can do without legislative change, and I have met with staffs of this Committee, other Committees, to talk about proposed legislation that I know the Congress is considering that would also address these issues.

Senator CARPER. Good. Well, we will look forward to those recommendations. Thank you.

Mr. Roth, as the Inspector General at DHS, you have testified about the impact of the Department of operating on a Continuing Resolution and the uncertainty of future funding. Would any of the other witnesses care to weigh in and to address this issue? I call it stop and go budgeting. It is happening, and we have done it, and we do it too much. We are still doing it too much. Sometimes, we shut down the government, as you know, which is awful, and it is a hugely wasteful thing. But, the others, if I could. We have heard from you, John, but we would like to hear from the other IGs, if you care to address this situation, which is, of course, again on crisis budgeting.

Mr. HOROWITZ. I will tell you, in the 2½ years I have been IG, I have faced the budgeting process where I do not think in any year I have been here I have had a budget on October 1 that I can plan around. It has come in either 3 months or 6 months into the year. And, it is very difficult to plan when almost 80 percent, I believe, of our costs are personnel costs. It is all about who we can



hire and whether we can hire, and it is simply impossible to plan for hiring if you do not know 9 months from now whether you are going to continue to have the kind of budget that would allow you to hire people behind it. It is a very big challenge.

Senator CARPER. All right. Thank you. Mr. Linick.

Mr. LINICK. Yes. I would agree with IG Horowitz. In fiscal year 2013, our appropriation was reduced almost \$6 million between the full-year CR and sequestration, and for an office like ours, which is trying to grow and strengthen oversight, it makes it very difficult.

Senator CARPER. Mr. O'Carroll, last word on this question.

Mr. O'CARROLL. Well, one, we are independent. We get a special appropriation apart from Social Security. They are supportive of us and we have been very fortunate in terms of our appropriations. However, over the last few years, as everyone well knows, we were going from Continuing Resolution to another, which kept our base flat, and at the same time, our costs were going up, and with cuts on top of that, we have had a 10-percent reduction in staff over the last few years. So, as all the demands are going up, our resources are declining. So, we do need a sustainable budget into the future so that we can make these important plans.

Senator CARPER. All right. Thank you.

The Chairman reminds me we have to wrap up. Can I ask each of you to just give us a couple of sentences on the one take-away, if we only have one take-away that we take away with us, what would that be? A to-do list for us.

Mr. HOROWITZ. From my standpoint, Senator, it would be ensure that the FBI complies with the Section 218 provision that the Congress put in place in the Appropriations Act.

Senator CARPER. All right. Thank you. Mr. Linick.

Mr. LINICK. From my point of view, it is funding for our overseas contingency operation, Operation Inherent Resolve, for which we have joint oversight responsibilities with the United States Agency for International Development (USAID) OIG and Department of Defense (DOD) OIG. We are basically taking money out of our existing budget to fund these responsibilities.

Senator CARPER. All right. Thank you. Mr. Roth.

Mr. ROTH. I would say it is engaged oversight, Senator, to read our reports, look at our reports. If you have questions about our reports, we are available to brief you on them. But, then, hold the agencies accountable for what it is that you find.

Senator CARPER. All right. Thanks. Mr. O'Carroll.

Mr. O'CARROLL. Senator Carper, I would say we need an integrity fund, which is what I was saying at the beginning. In terms of all the billions that are being recovered by SSA and by us, if we could be using those again to prevent fraud and identify improper payments, it would help.

To give you an example, SSA doing continuing disability reviews, bringing a person back in to see whether or not their health has improved, has a 15-to-1 return on investment—

Senator CARPER. Oh, wow.

Mr. O'CARROLL [continuing]. So, if that type of money is appointed to that, that will help. In my case, we have the Cooperative Disability Investigative Units. Those are returning 10-to-1 on 9-to-

1, to be exact. But, again, if we had sustainable money from an integrity fund, that would really help us.

Senator CARPER. Good. Thank you all. Thank you.

Chairman JOHNSON. Thank you, Senator Carper. I want to thank all my colleagues for their attendance, for their thoughtful questions.

I want to thank our witnesses for your thoughtful testimony and your answers.

This hearing record will remain open for 15 days, until March 11, 5 p.m., for the submission of statements and questions for the record.

This hearing is adjourned.

[Whereupon, at 11:56 a.m., the Committee was adjourned.]

## A P P E N D I X

---

### **Opening Statement of Chairman Ron Johnson “Improving the Efficiency, Effectiveness, and Independence of Inspectors General” February 24, 2015**

*As prepared for delivery:*

Good morning and welcome.

Inspectors General (IGs) are statutorily tasked with a mission “to promote economy, efficiency, and effectiveness” at their agency and “to prevent and detect fraud and abuse.” It is no coincidence that the mission is almost identical to the goals that Ranking Member Carper and I developed for our Committee: “to identify/reduce/eliminate duplication, waste, fraud, and abuse within government” and “increase the efficiency and effectiveness of federal agencies.”

The Inspector General Act is clear: IGs are to be independent from the agency, have access to all records available to the agency, and make their work readily available to the public. It is Congress’s job to ensure they are meeting these obligations and have the tools and resources necessary to fulfill their mission.

IGs can have significant positive effect on the federal budget, and are a powerful ally to Congress in providing oversight of agency use of funds and ferreting out improper payments. For example, Inspector General O’Carroll at the Social Security Administration estimated his office last year alone saved \$552 million through their investigations. Additionally, O’Carroll’s office identified more than \$5 billion in Federal funds that could be put to better use, over \$1 billion in questioned costs, and over \$21 million in civil monetary penalties and assessments.

Last year, then-Chair of the Subcommittee on Financial and Contracting Oversight Claire McCaskill and I issued a report that highlighted the importance of IG independence. The report detailed findings against former acting Inspector General Charles Edwards, and showed what can happen when an IG post is left vacant and an acting IG is vying for the position. It is unsurprising that independence may be compromised if the person deciding who gets the permanent job is the President, rather than an independent arbiter.

There are currently eleven agency vacancies, totaling 15 percent of the IG offices. Most troubling is the Department of Veterans Affairs (VA). The President has known since November 2013 that the VA IG was stepping down that December. Yet the President has failed to nominate someone for the position. My letter to the President asking him to appoint a permanent VA Inspector General has been ignored. As have similar letters sent last year by House Committee on Veterans’ Affairs Chairman Miller and then-Chairman Carper and Ranking Member Coburn of our Committee.

While the post remains vacant, the VA continues to be embroiled by scandals that are threatening our veterans’ safety. Most recently, reports have come to light that at least three veterans have died after treatment at a facility in my own state, the Tomah, Wisconsin Veterans Affairs Medical Center (VAMC). Two of those deaths were connected to the alleged over

prescription of opioids. Not only was my office never briefed or provided with a report the VA OIG was putting together last year about the Tomah VMAC allegations, but the office has refused to provide my staff with documents related to that investigation. The VA OIG has even gone so far as to argue that the Department would have to approve parts of the response before sharing the documents with Congress. It is critical that the President swiftly appoint a permanent, independent IG to that post.

I appreciate the witnesses coming in to explore these and other challenges IGs face today. Additionally, I look forward to introducing legislation, hopefully this week, with Senators Grassley and McCaskill that will address many of the issues discussed today and that will provide more tools and greater independence for Inspectors General.

**Opening Statement of Ranking Member Thomas R. Carper**  
**“Improving the Efficiency, Effectiveness, and Independence of Inspectors General”**  
**February 24, 2015**

*As prepared for delivery:*

Two weeks ago, this Committee held a hearing to examine the Government Accountability Office's 2015 'High-Risk List,' which I have long considered Congress' 'to-do' list. In some ways, today's hearing is a continuation, or 'Part 2' of that hearing. Like the GAO, the Inspectors General were created to promote the economy, efficiency, and effectiveness of federal departments and agencies.

Every year, Inspectors General identify billions of dollars in potential savings the federal government can achieve through improved management practices. At a time when agencies make an estimated \$125 billion in improper payments each year, the work of Inspectors General can go a long way in reducing our federal budget deficits.

Inspectors General and their staffs promote efficiencies throughout our federal government, help reveal and prosecute wrongdoing, and provide invaluable support to the Congress and the agencies they oversee. Simply put, since Congress created the Inspectors General position in 1978, IG's have become an essential component of government oversight.

The work of the Inspectors General is critical to this committee, to the agencies they oversee, and to the American public. We rely on them for their investigations, their audits, their recommendations, and their advice. For that reason, it is important that they remain independent and are given access to the information that they need to carry out their responsibilities.

We have a terrific panel of witnesses here before us today, and I am keenly interested in hearing more about the work their offices are conducting and how we can enhance their effectiveness further. One point I would like to raise is the impact of vacant Inspector General positions, and how not having a permanent Inspector General at an agency can hinder oversight.

I also plan on asking Mr. Roth about the impact that the continuing fight over funding the Department of Homeland Security has on his office and on DHS as a whole. As we meet today to discuss the efficiency and effectiveness of the federal government, I would be remiss if I didn't mention the harmful and wasteful impact funding uncertainty is having on the Department of Homeland Security. Congress needs to do its job and fund the Department so that Mr. Roth and his colleagues can do their work, and the Department as a whole can continue its work to keep all of us safe.

###



Office of the Inspector General  
United States Department of Justice

Statement of Michael E. Horowitz  
Inspector General, U.S. Department of Justice

*before the*

U.S. Senate Committee on Homeland Security and Governmental Affairs

*concerning*

"Improving the Efficiency, Effectiveness, and Independence of Inspectors General"

February 24, 2015

Mr. Chairman, Senator Carper, and Members of the Committee:

Thank you for inviting me to testify regarding the continued challenges to the efficiency, effectiveness, and independence of Inspectors General (IGs). In January, I also became the Chair of the Council of the Inspectors General on Integrity and Efficiency (CIGIE), and I am honored to serve the Inspector General community in that position. At a time of belt-tightening across the federal government, our statutory mission at the Council of IGs – to address integrity, efficiency, and effectiveness issues that transcend individual federal agencies – could not be more important.

As the Inspector General for the Department of Justice (DOJ OIG) and Chair of the Council of IGs, I look forward to working with this Committee to ensure that Inspectors General have the independence and tools they need to do their jobs on behalf of the American people, including making sure they have complete and timely access to agency information that is critical to performing their mission. I also look forward to working with the Committee to assist in developing the legislative reforms that will help improve our ability to conduct strong and effective oversight.

#### **Achievements of Inspectors General**

Year in and year out, the Inspector General community has demonstrated its ability to root out waste, fraud, abuse, mismanagement, and misconduct through our audits, investigations, inspections, and reviews. Our efforts result in agencies that are more effective and efficient. The foundation for this work is our independence and central to that is our ability to access information that is in the possession of the agencies that we each oversee.

Inspectors General have a track record of delivering measurable and significant benefits to the taxpayers. For example, in Fiscal Year (FY) 2013, the approximately 14,000 employees at the 72 federal Offices of Inspector General conducted audits, inspections, evaluations, and investigations resulting in the identification of approximately \$37 billion in potential cost savings and approximately \$14.8 billion from investigative recoveries and receivables. In comparison, the aggregate FY 2013 budget of the 72 federal OIGs was approximately \$2.5 billion, meaning that these potential savings represent about a \$21 return on every dollar invested in the IGs, in addition to the other valuable guidance we provide in the management of our agencies' operations and programs. And all of this was accomplished during a time of sequestration, when many of us in the Inspector General community, including the DOJ OIG, were faced with significant budget cuts that directly impacted our work. For example, staffing in my office fell by nearly ten percent, which inevitably affected our workflow, and is still below pre-sequestration levels. As we once again face the prospect of sequestration next year, many of us in the Inspector General community are concerned about the potential impact that another period of sharply limited resources could have on our ability to continue to perform the kind and range of audits, inspections, evaluations, and investigations that are expected of us.

Speaking specifically for my Office, the DOJ OIG also has delivered outstanding value to the taxpayer. In FY 2014, the DOJ OIG identified over \$23 million in questioned costs and nearly \$1.3 million in taxpayer funds that could be put to better use by the Department. And our criminal, civil, and administrative investigations resulted in the imposition or identification of almost \$7 million in fines, restitution, recoveries, and other monetary results last fiscal year. This is in addition to the \$136 million in audit-related findings and over \$51 million in investigative-related findings that the DOJ OIG identified from FY 2009 through FY 2013. These monetary savings and recoveries, however, do not take into account some of our most significant reviews, which cannot be translated into quantifiable dollar savings but which address fundamental issues affecting national security, civil liberties, safety and security at federal prisons, effectiveness of law enforcement programs, and the conduct of Department employees. Examples include our reviews of the Federal Bureau of Investigation's (FBI) use of its authorities under the PATRIOT Act and the FISA Amendments Act, the government's information sharing prior to the Boston Marathon bombing, Bureau of Alcohol, Tobacco, Firearms, and Explosives' (ATF) Operation Fast & Furious, the Bureau of Prison's (BOP) management of the compassionate release program, the Department's handling of known or suspected terrorists in the Witness Security Program, the FBI's management of the terrorist watch list, nepotism by Department personnel, and our investigation of the FBI's corrupt relationship with James "Whitey" Bulger.

In addition, the DOJ OIG continues to conduct extensive oversight of the Department's programs and operations. For example, we are conducting reviews of the ATF's oversight of its storefront undercover operations and its Monitored Case Program; the Department's oversight of asset seizure activities focusing on policies, practices and outcomes of such programs; the FBI's use of telephony metadata obtained under Section 215 of the Patriot Act; and the impact of BOP's aging inmate population. The DOJ OIG is also examining how the BOP manages its private contract prisons, whether contract prisons meet BOP's safety and security requirements, and how contract facilities compare with similar BOP facilities in terms of inmate safety and security.

Further, we have initiated a joint review with the Inspectors General for the Intelligence Community and Department of Homeland Security on domestic sharing of counterterrorism information; this review was based on a request from this Committee, the Senate Judiciary Committee, and the Senate Select Committee on Intelligence. We also are conducting a joint review with the Department of State Inspector General regarding the post-incident responses by the Drug Enforcement Administration (DEA) and the State Department to three drug interdiction missions in Honduras in 2012, all involving the use of deadly force. The joint review will address pre-incident planning, the rules of engagement and information provided to Congress and the public by the State Department and DEA.



### **Inspector Generals' Access to Documents and Materials**

While the Inspector General community has been able to generate impressive results, we face significant issues and challenges that affect our independence and ability to conduct effective oversight. For example, timely access to information in our agency's files remains an important issue and challenge. As I have testified on multiple occasions, in order to conduct effective oversight, an IG must have timely and complete access to documents and materials needed for its audits, reviews, and investigations. This is an issue of utmost importance, as evidenced by the fact that 47 Inspectors General signed a letter in August 2014 to the Congress strongly endorsing the principle of unimpaired Inspector General access to agency records.

The Inspector General Act (IG Act) could not be clearer – Inspectors General are entitled to complete, timely, and unfiltered access to all documents and records within the agency's possession. Delaying or denying access to agency documents imperils an IG's independence, and impedes our ability to provide the effective and independent oversight that saves taxpayers money and improves the operations of the federal government. Actions that limit, condition, or delay access have profoundly negative consequences for our work: they make us less effective, encourage other agencies to take similar actions in the future, and erode the morale of the dedicated professionals that make up our staffs.

My Office knows these problems all too well, and we continue to face challenges in getting timely access to information from Department components. In particular, the FBI continues to take the position it first raised in 2010 that Section 6(a) of the Inspector General Act does not entitle the DOJ OIG to all records in the FBI's possession and therefore has refused DOJ OIG requests for various types of records. As I have indicated in my prior testimony, the DOJ OIG and CIGIE strenuously disagree with the FBI's position, which we have both made clear to the Department's leadership.

In May 2014, in an attempt to resolve this dispute, the Department's leadership asked the Office of Legal Counsel (OLC) to issue an opinion addressing the legal objections raised by the FBI. However, nine months later, we are still waiting for that opinion even though, in our view, this matter is straightforward and could have been resolved by the Department's leadership without requesting an opinion from OLC. I cannot emphasize enough how important it is that OLC issue its opinion promptly because the existing process at the Department, which as described below essentially assumes the correctness of the FBI's legal position, undermines our independence by requiring us to seek permission from the Department's leadership in order to access certain records. The status quo cannot be allowed to continue indefinitely.

We appreciate the strong bipartisan support we have received from Congress in trying to address these serious issues. Most significantly, in December 2014, a provision was included in the Fiscal Year 2015 appropriations law – Section 218 – which prohibits the Justice Department from using appropriated funds to deny,

prevent, or impede the DOJ OIG's timely access to records, documents, and other materials in the Department's possession, unless it is in accordance with an express limitation of Section 6(a) of the Inspector General Act. The provision also included a requirement to inform Congress of violations of this section. While the law only recently went into effect, it is clear that the Department has taken notice of it and it has already had a positive impact on our ability to get access to records in certain reviews for some components.

However, despite Congress's reaffirmation in Section 218 of its support for DOJ OIG's access to records in the Department's possession, the FBI continues to maintain that Section 6(a) of the IG Act does not authorize access to certain records in its possession, such as grand jury, Title III electronic surveillance, and Fair Credit Reporting Act information, because of disclosure limitations in statutes other than the IG Act. As a result, the FBI is continuing the costly and time-consuming process it put in place prior to Section 218's enactment of reviewing documents responsive to DOJ OIG requests prior to producing them to us. The FBI has been undertaking this process in order to withhold from the DOJ OIG records that the FBI believes we are not legally entitled to receive, despite the absence of any such limitation in the IG Act. Prior to the enactment of Section 218, this FBI document review process, in addition to consuming the FBI's resources, significantly impacted the FBI's timely production of material to us in several of our matters, including whistleblower retaliation investigations.

On February 3, 2015, and again on February 19, 2015, we had to invoke the Section 218 provision and report that the FBI had failed to provide the OIG with timely access to certain records regarding two whistleblower retaliation investigations, and in our review of the Drug Enforcement Administration's use of administrative subpoena authority. The DOJ OIG will continue reporting to Congress, as we are required to do under Section 218, impediments imposed by the FBI, or any DOJ component, to our timely access to records in the Department's possession that we are entitled to receive under Section 6(a) of the IG Act.

It is long past time to resolve this legal dispute. The FBI's position that Section 6(a) of the IG Act does not authorize the DOJ OIG to have access to various categories of records in its possession contradicts the plain language of the IG Act, Congress's clear intent when it created the DOJ OIG (as confirmed by the recent enactment of Section 218), the FBI's and the Department's practice prior to 2010 of frequently providing the very same categories of information to the DOJ OIG without any legal objection, court decisions by two different Federal District Judges in 1998 and 1999 stating that the DOJ OIG could receive grand jury material, and the reasoning of a 1984 decision by the Office of Legal Counsel concluding that grand jury material could be provided to the Department's Office of Professional Responsibility.

The Department, in response to the FBI's questioning of our legal authority to review these types of records, has imposed a process whereby the Attorney General or the Deputy Attorney General may grant permission to the DOJ OIG to access such records if they conclude that specific reviews will assist them in the

performance of their duties, and they have done so in each such review so far where the issue has arisen. However, no such permission is necessary under Section 6(a) of the Inspector General Act. Moreover, requiring an OIG to obtain permission from agency leadership in order to review agency documents seriously impairs Inspector General independence, creates excessive delays, and may lead to incomplete, inaccurate, or significantly delayed findings or recommendations.

We remain hopeful that the OLC opinion that has been sought by the Department's leadership will conclude that the IG Act entitles Inspectors General to independent access to the records and information to which we are entitled under the express terms of the IG Act. However, should OLC interpret the IG Act in a manner that undercuts Congress's clear intent and limits the DOJ OIG's access to documents, I would be pleased to work with the Committee to develop a legislative remedy to address this issue.

#### **Agency Classification Claims and Delays**

The mission of Inspectors General is to inform the public, Congress, and agency leadership about fraud, waste, abuse, mismanagement, and misconduct in the federal government. It is important to make our findings accessible to American taxpayers. Therefore, there is great concern when an agency tries to redact information that is not classified and where the agency has not articulated a satisfactory reason to the OIG why the information is particularly sensitive.

At DOJ OIG, we have frequently been faced with proposed redactions to our national security reports that were over-inclusive, inconsistent with classification determinations made in connection with our prior reports, and involved information the government had already made public. For example, we faced this issue with the Department in the joint Boston Marathon Bombing report, as well as in our recent reviews of the FBI's use of National Security Letters and Patriot Act Section 215 orders for business records. With the exception of the Boston Marathon Bombing report, we ultimately came to a resolution with the relevant agency. However, to reach these resolutions, we unnecessarily expended substantial resources and had to engage in protracted discussions that went on for many months, thereby delaying the public release of our reports. Maintaining transparency in its operations and in the contents of its reports is crucial for an OIG to provide credible oversight.

#### **Strengthening Tools of Inspectors General**

The Council of IGs will shortly be providing the Congress with a letter identifying the legislative priorities for the entire Inspector General community. Let me briefly mention a few areas where the ability of Inspectors General could be enhanced in order to conduct strong and effective oversight.

One such area where legislation could enhance the ability of Inspectors General to conduct strong and effective oversight is in addressing the limitations on our ability to obtain and match readily available information across Executive

Branch agencies in furtherance of our efforts to combat fraud and misconduct. These limitations arise out of the Computer Matching and Privacy Protection Act (CMPPA). The information at issue currently exists within the possession of government agencies – it does not require any further collection of documents or information – and Inspectors General of the agency are already entitled to access it under the IG Act. Yet the CMPPA contains provisions that impact the ability of Inspectors General to efficiently obtain information from another agency and to share it with each other. The timely use of such data by Inspectors General to identify those who improperly receive federal assistance, federal grants or contracts, or duplicative payments will improve program efficiency, enhance recovery of improper payments, and empower Inspectors General to better address waste, fraud, and abuse in federal programs. In my view, exempting Inspectors General from the CMPPA would greatly assist our ability to ensure that federal programs are effective and efficient without undermining the purposes of that law.

Another such area is the capacity of Inspectors General to obtain testimony from former agency employees, contractors, and grant recipients. While the IG Act provides us with the ability to subpoena documents and records from those individuals, we are unable to require them to provide testimony, even if they have critical evidence of fraud or of agency misconduct. I have seen several instances during my tenure as Inspector General where former employees of the Department (including those who resigned or retired immediately prior to a DOJ OIG interview), contractors, and grant recipients have refused to speak with the DOJ OIG, thereby impeding our ability to gather potentially valuable and relevant evidence. While I believe any authority granting Inspectors General the ability to compel testimony should include protections to ensure the authority is used appropriately and only when necessary, and that it does not inadvertently impair Justice Department prosecutions, I am confident based on my years as a former federal prosecutor and as a senior official in the Department's Criminal Division that such protections can readily be developed while also empowering Inspectors General to carry out their responsibilities. I look forward to discussing this issue further with the Committee.

We also believe several changes to the Program Fraud Civil Remedies Act (PFCRA), which is often referred to as the "mini False Claims Act" because it provides administrative civil remedies for false claims of \$150,000 or less and for false statements in cases DOJ does not accept for prosecution, could make PFCRA a faster and lower-cost alternative to recover damages in smaller dollar fraud cases. As such, CIGIE will be proposing several statutory changes, which have been developed in consultation with key stakeholders, such as the Armed Services Board of Contract Appeals and Boards of Contract Appeals.

We also need to address the concerns that have been raised recently relating to the work of CIGIE's Integrity Committee, including with respect to the timeliness of its work and the transparency of its efforts. One of my first meetings as Chair of Council of IGs was with the Assistant Director of the FBI, who chairs the Integrity Committee, in order to discuss ways to address these issues. Inspectors General must maintain the highest levels of accountability and integrity, and as Chair of the

Council of IGs, I will make it a top priority to improve the procedures for the Integrity Committee.

Finally, I would like to note that there are currently several vacancies in the Inspector General community – including at the Central Intelligence Agency, the U.S. Agency for International Development, the Department of Veterans Affairs, the General Services Administration, and the Department of the Interior. As this Committee has recognized previously, acting Inspectors General and career staff carry on the work of the offices during a vacancy, and they do it with the utmost of professionalism; however, a sustained absence of confirmed leadership is not healthy for any office, particularly one entrusted with the important and challenging mission of an Inspector General and one that requires independence and authority to speak with a strong voice. On behalf of the Inspector General community, I would encourage swift action with respect to selecting and confirming candidates for current and future vacant IG positions.

### **Conclusion**

In conclusion, I look forward to working closely with this Committee to ensure that Inspectors General continue to be empowered to provide the kind of independent and objective oversight for which they have become known, and which the taxpayers deserve.



**OIG** Office of Inspector General  
U.S. Department of State • Broadcasting Board of Governors

STATEMENT BY  
STEVE A. LINICK  
INSPECTOR GENERAL FOR THE U.S. DEPARTMENT OF STATE  
AND THE BROADCASTING BOARD OF GOVERNORS

BEFORE THE  
COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS  
U.S. SENATE

FIRST SESSION, 114TH CONGRESS

IMPROVING THE  
EFFICIENCY, EFFECTIVENESS, AND INDEPENDENCE  
OF INSPECTORS GENERAL

FEBRUARY 24, 2015

Chairman Johnson, Ranking Member Carper, and Members of the Committee, thank you for inviting me to testify today regarding the work of the Office of Inspector General (OIG) for the Department of State (Department) and the Broadcasting Board of Governors (BBG). In my testimony, I will highlight some of our recent oversight work, our new initiatives, and the challenges we face in performing our oversight. I will also address the overall positive results and impact of OIG work.

## I. STATE OIG'S MISSION AND OVERSIGHT EFFORTS

It is my honor to have led the State OIG for the past 17 months—since the end of September 2013. OIG's mandate is broad and comprehensive, involving oversight of the full scope of the Department and BBG programs and operations, including more than 72,000 employees and 280 overseas missions and domestic entities, as well as the U.S. Section of the International Boundary and Water Commission. These agencies are funded through combined annual appropriations of approximately \$15 billion and nearly \$7 billion in consular fees and other earned income. OIG also is responsible for full or partial oversight of an additional \$17 billion in Department-managed foreign assistance.

State OIG differs from most OIGs in that it has a mandated inspection function. We are statutorily required to periodically audit and inspect every domestic and overseas operating unit around the world. Since the beginning of my tenure, we have redoubled our efforts to address some of the top challenges of the Department, including the protection of people and facilities, the management of contracts and grants, and the security of sensitive information around the world. I will elaborate on each of these:

### Improving Security

Protecting the people who work for the Department is a top priority for the Department and for OIG. OIG has inspected physical security at overseas posts for years; however, since the September 2012 attacks on U.S. diplomatic facilities and personnel in Benghazi, Libya, OIG has significantly stepped up its oversight efforts related to security, including targeted audits and evaluations. We help safeguard the lives of people who work in or visit our posts abroad by performing independent oversight to help the Department improve its security posture. Unlike many of our other oversight activities, as well as more traditional Government-wide work conducted by the Inspector General (IG) community, we cannot attach a dollar-value metric to our efforts related to physical security. Achievement in this area is not reflected in our "return on investment" statistics. However, our oversight successes are a source of great satisfaction, and to the degree that unreasonable risk persists, OIG will vigorously continue to highlight any deficiencies to the Department and to Congress.

Although the Department has made improvements on overseas security, challenges remain. Through our inspection and audit work, OIG continues to find security deficiencies that put our people at risk. Those deficiencies include failing to observe set-back and perimeter requirements

and to identify and neutralize weapons of opportunity. Our teams also uncover posts that use warehouse space and other sub-standard facilities for offices, another security deficiency.<sup>1</sup> Under the Department's security rules, office space must meet more stringent physical security standards than warehouse space. Our audit<sup>2</sup> of the Local Guard Program found that firms providing security services for embassy compounds were not fully vetting local guards they hired abroad, placing at risk our posts and their personnel. In other audits, we found that the Bureau of Diplomatic Security (responsible for setting standards) and the Bureau of Overseas Buildings Operations (responsible for constructing facilities to meet those standards) often do not coordinate adequately to timely address important security needs.<sup>3</sup> Those bureaus have taken steps to improve their communication and coordination. OIG will closely monitor whether these steps actually sustain improved joint performance to mitigate security vulnerabilities.

OIG has also examined the Department's handling of significant security breaches that resulted in the deaths of U.S. Government personnel. For example, in September 2013, OIG published a report<sup>4</sup> on its Special Review of the Accountability Review Board (ARB). As you know, the Secretary of State convenes an ARB when serious injury, loss of life, or significant destruction of property at or related to a U.S. Government mission abroad has occurred. The most recent ARB was convened following the 2012 attacks and tragic events in Benghazi. OIG's Special Review examined the process by which the Department's ARBs are established, staffed, supported, and conducted as well as the manner in which the Department tracks the implementation of ARB recommendations. We found that follow-through on long-term security program improvements involving physical security, training, and intelligence-sharing lacked sustained oversight by Department principals. Over time, the implementation of recommended improvements slows. The lack of follow-through explains, in part, why a number of Benghazi ARB recommendations mirror previous ARB recommendations. This underscores the need for a sustained commitment by Department principals to ensure that ARB recommendations are timely and effectively carried out.

OIG also continues to increase its focus on security issues. OIG currently is following up on the Department's compliance with OIG recommendations in the ARB Special Review. OIG will also review the Department's reported compliance with the 29 recommendations in the Benghazi ARB report. In addition, planned FY 2015 security audits include an audit of the approval and certification process used to determine employment suitability for locally employed staff and contracted employees, an audit of emergency action plans for U.S. Missions in the Sahel region of Africa, and an audit of the Vital Presence Validation Process (VP2) implementation. VP2 is the Department's formal process for assessing the costs and benefits of maintaining its presence in

<sup>1</sup> *Review of Overseas Security Policy Board Exceptions and Secure Embassy Construction and Counterterrorism Act of 1999 Waivers* (ISP-I-13-06, January 2013).

<sup>2</sup> *Audit of Contractor Compliance With and Department of State Oversight of the Process Required for Vetting Local Guards* (AUD-HCI-14-24, June 2014).

<sup>3</sup> *Inspection of the Bureau of Diplomatic Security, High Threat Programs Directorate* (ISP-I-14-23, September 2014); *Compliance Follow-up Review of the Bureau of Overseas Buildings Operations* (ISP-C-11-26, May 2011); *Audit of the Process to Request and Prioritize Physical Security-Related Activities at Overseas Posts* (AUD-FM-14-17, Mar. 2014).

<sup>4</sup> *Special Review of the Accountability Review Board Process* (ISP-I-13-44A, September 2013).



dangerous locations around the world. Finally, we will continue to emphasize security concerns as we inspect the International Programs Directorate of the Bureau of Diplomatic Security.

### Improving Oversight of Contracts and Grants

Contracts and grants are critical to the Department's mission. The Department's obligations in FY 2014 equaled approximately \$9 billion in contractual services and \$1.5 billion in grants, totaling approximately \$10.5 billion.<sup>5</sup> However, the Department faces challenges managing its contracts, grants, and cooperative agreements. These challenges have come to light repeatedly in OIG audits, inspections, and investigations over the years. They were highlighted in two recent OIG Management Alerts that I provided to senior Department officials.

In FY 2014, more than 50 percent of post or bureau inspections contained formal recommendations to strengthen controls and improve administration of grants. In our March 2014 Management Alert<sup>6</sup> focusing on contract management deficiencies, we reported that over the past 6 years, files relating to Department contracts with a total value of more than \$6 billion were either incomplete or could not be located at all. In a September 2014 Management Alert<sup>7</sup> on grant management deficiencies, we highlighted weaknesses in oversight, insufficient training of grant officials, and inadequate documentation and closeout of grant activities. In FY 2012 alone, the Department obligated more than \$1.6 billion for approximately 14,000 grants and cooperative agreements worldwide.<sup>8</sup> This is a significant outlay of taxpayer funds, which makes oversight and accountability even more critical. Grants present special oversight challenges because, unlike contracts, they do not generally require the recipient to deliver specific goods or services that can be measured.

The Department has agreed to adopt most of OIG's recommendations in these Management Alerts. OIG will continue to monitor the Department's efforts and seek additional improvements in this important area.

In FY 2015, OIG plans on issuing, among others, audits involving non-lethal aid and humanitarian assistance in response to the Syrian crisis, the Iraq Medical Services Contract, and the Bureau of International Narcotics and Law Enforcement's Embassy Air Wing Contract in Iraq.

### Enhancing Information Security

Another top management challenge concerns information security. The Department is entrusted to safeguard sensitive information, which is often targeted by multiple sources, including terrorist and criminal organizations. The Department is responsible for preserving and protecting classified and other sensitive information vital to the preservation of national security in high-risk environments across the globe. OIG's assessments of the Department's cybersecurity

<sup>5</sup> USASpending, <[www.usaspending.gov](http://www.usaspending.gov)>, accessed on February 19, 2015.

<sup>6</sup> *Management Alert: Contract File Management Deficiencies* (MA-A-0002, March 20, 2014).

<sup>7</sup> *Management Alert: Grants Management Deficiencies* (MA-14-03, September 26, 2014).

<sup>8</sup> U.S. Government Accountability Office, *Implementation of Grants Policies Needs Better Oversight* (GAO-14-635, July 2014).

programs have found recurring weaknesses and noncompliance with the Federal Information Security Management Act (FISMA) with respect to its unclassified systems. In a November 2013 Management Alert,<sup>9</sup> we raised concerns and found inadequate access controls, ineffective security scanning, and weaknesses in cybersecurity management (including absence of a strategic plan).

Our work in the information security area is ongoing. Since my arrival, OIG has arranged for penetration testing of the Department's unclassified networks in order to better assess their vulnerability to attack.

## II. NEW OIG INITIATIVES

Since joining OIG, I have implemented a number of new initiatives to enhance the effectiveness and efficiency of OIG's independent oversight of the Department's programs and operations:

### Management Alerts and Management Assistance Reports

Soon after my arrival, we began to issue Management Alerts<sup>10</sup> and Management Assistance Reports.<sup>11</sup> They are intended to alert Department leadership to significant issues that require immediate corrective action. For example, we issued two Management Assistance Reports recommending that the Department take immediate action (for example, termination) against certain grantees for misuse of grant funds. In addition, and as mentioned above, we issued Management Alerts<sup>12</sup> relating to serious problems in the areas of grant and contract management and information security. The response from the Department to these products has been favorable as they have concurred with most of our recommendations.

Moreover, Congress has also recognized their value. The explanatory statement to the FY 2015 Omnibus Appropriations bill included language directing the Secretary of State to submit to Congress a report detailing the status of each of the recommendations included in OIG's FY 2014 Management Alerts.

<sup>9</sup> *Management Alert: OIG Findings of Significant, Recurring Weaknesses in Department of State Information System Security Program* (MA-A-0001, November 12, 2013).

<sup>10</sup> *Management Alert: OIG Findings of Significant, Recurring Weaknesses in Department of State Information System Security Program*, (MA-A-0001, January 2014); *Management Alert: Contract File Management Deficiencies* (MA-A-0002, March 2014); *Management Alert: Grants Management Deficiencies* (MA-14-03, September 2014).

<sup>11</sup> *Management Assistance Report: Concerns with the Oversight of Medical Support Service Iraq Contract No. SAQMMMA11D0073* (AUD-MERO-15-20, December 23, 2014); *Management Assistance Report: Grant Improprieties by Nour International Relief Aid* (AUD-CG-15-19, January 15, 2015); *Management Assistance Report: Termination of Construction Grants to Omran Holding Group* (AUD-CG-14-37, September 18, 2014).

<sup>12</sup> *Management Alert: Contract File Management Deficiencies* (MA-A-0002, March 20, 2014); *Management Alert: Grants Management Deficiencies* (MA-14-03, September 26, 2014); *Management Alert: OIG Findings of Significant and Recurring Weaknesses in the Department of State Information System Security Program* (MA-A-0001, November 12, 2013).

## Office of Evaluations and Special Projects

The Office of Evaluations and Special Projects (ESP) was established in 2014 to enhance OIG's oversight of the Department and BBG. In particular, ESP undertakes special evaluations and projects and complements the work of OIG's other offices by further developing the capacity to focus on broader, systemic issues. For example, in October 2013, ESP published a Review of Selected Internal Investigations by DS,<sup>13</sup> which addressed allegations of undue influence by Department management. Currently, ESP is conducting a joint review with the Department of Justice's OIG of the handling of the use of lethal force during a counternarcotics operation in Honduras in 2012.

## Increased Emphasis on Whistleblower Protections

OIG is also using ESP to improve OIG's capabilities to meet statutory requirements of the Whistleblower Protection Enhancement Act of 2012 and other whistleblower initiatives. Department employees, employees of contractors and grantees, and others have been encouraged to report fraud, waste, abuse, and misconduct. Such reporting must take place without fear of retaliation. We have designated an ombudsman (a senior ESP attorney) for these purposes. We also produced an educational video and published a guide regarding whistleblower protections on our website.<sup>14</sup>

## Oversight of Overseas Contingency Operations

The IG community was recently tasked, through an amendment to the Inspector General Act of 1978 (IG Act), with additional responsibility for overseeing current and future overseas contingency operations. Approximately 8 weeks ago, Jon T. Rymer, the Inspector General for the Department of Defense (DoD), was appointed Lead Inspector General for Operation Inherent Resolve (OIR)—the U.S.-led overseas contingency operation directed against the Islamic State of Iraq and the Levant (ISIL). Mr. Rymer subsequently appointed me as Associate Inspector General in charge of oversight. Three OIGs (State, DoD, and USAID) have dedicated staff to this important project. We are working jointly on: (1) strategic planning, to provide comprehensive oversight of all programs and operations in support of the OIR; (2) program management, to track, monitor, and update information provided by our agencies in support of the OIR; and (3) communications, to collect information and prepare periodic reports for Congress on projects related to the OIR. Relatedly, we are in the process of establishing a hotline dedicated to the contingency operation and developing joint investigative capabilities for OIR oversight.<sup>15</sup>

<sup>13</sup> *Review of Selected Internal Investigations Conducted by the Bureau of Diplomatic Security* (October 2014, ESP-15-01).

<sup>14</sup> OIG, Whistleblower Protection, <<http://oig.state.gov/hotline/whistleblower>>.

<sup>15</sup> OIG did not receive additional funding for ISIL oversight in 2015. In 2016, OIG received a total budget increase of \$9 million, which the OMB passback stated is intended "to address any expanded oversight requirements resulting from the FY 2015 counter-ISIL OCO budget amendment and the Counterterrorism Partnership Fund (CTPF), if enacted." Until the scope of the ISIL response is fully developed, OIG cannot predict the resources needed for effective oversight.

### **Data and Technology**

OIG is developing an automated evidence tracking system to enhance evidence processing accuracy and efficiency, and employee computer forensic and data processing procedures in order to significantly reduce agents' time and investigative hours. Further, we are building the capacity of our new data analytics group and developing a fusion cell consisting of special agents, forensic auditors, criminal analysts, and computer specialists. This group of specialists will enable all of our divisions to proactively analyze financial data to identify potential vulnerabilities in Department programs and processes and perform fraud risk assessments.

### **Suspension and Debarment**

We have enhanced our efforts to identify and refer appropriate cases to the Department for suspension and debarment. Our Offices of Investigations and Audits prepare detailed suspension and debarment recommendation packages, in consultation with our Office of General Counsel, including referral memoranda summarizing all relevant facts and setting forth the specific grounds for suspension or debarment and submit their packages to the Department's Suspension and Debarment Officials (SDOs) for action. Between 2011 and 2014, OIG referred 128 cases to the Department for action.

### **New Locations**

For reasons of oversight efficiency and to have "boots on the ground" at key financial locations, OIG intends in the near term to locate staff in Charleston, South Carolina, where one of the Department's Global Financial Services Center resides, and in Frankfurt, Germany, the site of one of the Department's Regional Procurement Support Office. Both locations are responsible for billions of taxpayer dollars. These moves will allow OIG to more efficiently and more economically access pertinent information and pursue targeted reviews.

### **Prosecution of Cases**

OIG has initiated a program to place one or more Special Assistant U.S. Attorneys (SAUSAs) in appropriate positions in the Department of Justice in order to prosecute more quickly and effectively cases involving fraud against the Department of State. For example, an OIG attorney-investigator now works as a full-time SAUSA in the U.S. Attorney Office for the Eastern District of Virginia.

## **III. CHALLENGES IN PERFORMING OVERSIGHT**

Finally, I want to address challenges that OIG faces in performing oversight:

### **Access**

In August 2014, I joined 46 of my colleagues from the IG community to write the Chairman and Ranking Members of this Committee as well as your House counterparts to express our support

for the Inspectors General of the Department of Justice, the Peace Corps, and the Environmental Protection Agency with respect to their concerns about access and independence. The principle that oversight necessarily requires complete, timely, and unfiltered access to agency information—and the fact that the IG Act entitles IGs to that information—needs to be upheld whenever challenged. Unfettered and complete access to information is the linchpin that ensures independence and objectivity for the entire OIG community.

At State OIG, we too are committed to ensuring that our work is independent and free from interference. We also recognize the importance of forging productive relationships with Department leadership and decision-makers. At the beginning of my tenure, Secretary Kerry, at my request, issued a Department notice to all employees outlining OIG authorities and obligations under the IG Act and advising staff of our need for prompt access to all records and employees.

Generally, most of our work is conducted with the Department's full cooperation and with timely production of material. However, there have been occasions when the Department has imposed burdensome administrative conditions on our ability to access documents and employees. At other times, Department officials have initially denied access on the mistaken assumption that OIG was not entitled to confidential agency documents. In these instances, OIG ultimately was able to secure compliance but only after delays and sometimes with appeals to senior leadership. These impediments have at times adversely affected the timeliness of our oversight work, resulting in increased costs for taxpayers.

Delays in responding to document requests also occur because the requested information has not been maintained at all or in a manner to allow timely retrieval. Such disorganization of information may negatively impact not only OIG audits, inspections, evaluations, and investigations but also the integrity of Department programs and operations. For example, an OIG Management Alert identified missing or incomplete files for contracts and grants with a combined value of \$6 billion.

### **OIG Network Vulnerabilities**

Vulnerabilities in the Department's unclassified network also affect OIG's IT infrastructure, which is part of the same network. We noted in our November 2013 information security Management Alert that there are literally thousands of administrators who have access to Department databases. That access runs freely to OIG's IT infrastructure and creates risk to OIG operations. Indeed, a large number of Department administrators have the ability to read, modify, or delete any information on OIG's network including sensitive investigative information and email traffic, without OIG's knowledge. OIG has no evidence that administrators have actually compromised OIG's network. However, the fact that the contents of our unclassified network may easily be accessed and potentially compromised unnecessarily places our independence at risk. We have begun assessing the best course of action to address these vulnerabilities.

### Testimonial Subpoenas and Other Tools

I agree with Department of Justice Inspector General Michael Horowitz and others who support the need for IGs to be able to compel witness testimony. As a former prosecutor, I believe that adding this tool, subject to appropriate oversight and coordination, is essential. I also support other tools to enhance OIG oversight efforts, including exemptions from the Computer Matching and Privacy Protection Act and the Paperwork Reduction Act.

### IV. IMPACT OF OIG WORK

Through our audits, evaluations, inspections, and investigations, OIG returns significant value to the taxpayers. In FY 2014, we issued 77 reports, which included audits of annual financial statements, procurement activities, and fund management. During this period, we identified \$43.3 million in taxpayer funds that could be put to better use by the Department. Additionally, our criminal, civil, and administrative investigations resulted in the imposition or identification of \$75 million in fines, restitution, recoveries, and other monetary results last fiscal year. This was in addition to the \$1 billion in financial results<sup>16</sup> from audit- or inspection-related findings and more than \$40 million in investigative-related financial results that OIG identified in the previous five fiscal years.

However, these financial statistics do not adequately take into account many of our most significant impacts—the physical safety of people and facilities, the conduct of Department employees, and other fundamental issues involving national security. Indeed, the work of our talented staff in reviewing security and leadership at our overseas and domestic posts has meaningful effects on the lives and well-being of employees throughout the Department. That is what motivates our employees, many of whom are on the road for long periods of time or who serve for extended periods at high-threat posts.

In conclusion, Chairman Johnson, Ranking Member Carper, and Members of the Committee, thank you again for the opportunity to testify before you today. I take seriously my statutory requirement to keep the Congress fully and currently informed, and I appreciate your interest in our work. I look forward to your questions.

###

---

<sup>16</sup> Financial results include the value of investigative fines/recoveries and management decisions made on questioned costs and funds put to better use from OIG recommendations.

STATEMENT OF JOHN ROTH  
INSPECTOR GENERAL  
DEPARTMENT OF HOMELAND SECURITY  
*BEFORE THE*  
COMMITTEE ON HOMELAND SECURITY  
AND GOVERNMENTAL AFFAIRS  
UNITED STATES SENATE  
*CONCERNING*  
IMPROVING THE EFFICIENCY, EFFECTIVENESS, AND INDEPENDENCE OF  
INSPECTORS GENERAL

February 24, 2015



Chairman Johnson, Ranking Member Carper, and Members of the Committee:

Thank you for inviting me here today to discuss how Congress can improve the efficiency, effectiveness, and independence of Inspectors General. I'm pleased to have the opportunity to share our efforts to improve the Department of Homeland Security (DHS) through our independent audits and inspections, as well as our efforts to ensure the integrity of the DHS workforce and its operations.

I would like to focus on some of DHS' challenges, many of which we highlighted in our fiscal year (FY) 2014 report on major management challenges, and some of which at times hamper our efforts to improve the Department's programs and operations.

### **Role of the Inspector General**

In some ways, my role is best described in the Comptroller General's Government Auditing Standards—otherwise known as “the Yellow Book”—which are the rules for government auditing organizations published by the Government Accountability Office.

Although not referring to inspectors general specifically, the description of the independence necessary for an auditor hits the nail on the head:

“Independence of mind [is the] state of mind that permits the performance of an audit without being affected by influences that compromise professional judgment, thereby allowing an individual to act with integrity and exercise objectivity and professional skepticism...Professional skepticism is an attitude that includes a questioning mind and a critical assessment of evidence.”

In a nutshell, that is my job: a professional skeptic. I act as an agent of positive change within the Department by having the freedom to be independent and objective and to speak truth to power. I am here to ask the difficult questions, to challenge the Department I work for to be better, to be more efficient, to ensure rigor in Departmental operations and to look for and eliminate waste.

I am independent of the Department while at the same time a part of it. The *Inspector General Act* gives me significant authority and substantial protection from undue influence. I am under nominal supervision by the Secretary, but he cannot, except for a few exceptions, control my work. My salary is fixed by statute, and I can be removed only by the President, and only after notice to Congress. I have, with a few narrow exceptions, the authority to conduct any investigation or audit, and write any report concerning Departmental operations, that in my judgment is necessary or desirable. The statute gives me the absolute right to protect the identity of my witnesses, who I depend on to expose fraud, waste, and abuse. I have control over my own personnel and



operations, and employ my own counsel. The *Inspector General Act* states that I am to have access to “all records,” which I believe means exactly what it says: “all records.”

Yet, for all the substantial power and protection Congress has given me in the *Inspector General Act*, it is not self-executing. It requires men and women within my office to have dedication and courage to ensure compliance with the provisions of the Act, and it requires the Secretary to understand the very valuable role that the Inspector General plays. Ultimately, if we are blocked from access to information, we have little recourse to enforce compliance. All we have is the ability to use the bully pulpit, and our reporting relationship with Congress, to attempt to get access to information and to guard against threats to our independence.

Moreover, my independence requires that I have no operational role within the Department. My only ability to change the Department for the better comes from the strength of my recommendations and the precision of my analysis. We recommend, but do not direct. This highlights the critical role that congressional oversight plays in ensuring effective Departmental operations: that which gets paid attention to gets fixed. Probing, fact-based oversight, whether done internally by an inspector general or externally by a congressional committee, can help bring about change. Without such vigorous oversight, and congressional interest in evaluating programs, there is less motivation to enact difficult institutional change.

#### Transparency of Reports

The *Inspector General Act* contemplates that my reports, to the greatest possible extent, be available to the public. Openness and transparency are critical to good government, and the Act allows me to publish my reports except in three narrow circumstances: first, where disclosure of the information is specifically prohibited by law; second, where specifically prohibited from disclosure by executive order in the interest of national defense, national security, or in the conduct of foreign affairs; and third, where part of an ongoing criminal investigation.

The Department often raises objections to the publication of certain information in our reports, often marking parts of our reports as “For Official Use Only” or “Law Enforcement Sensitive.” These designations are not recognized in the law, and in my experience they risk being used to attempt to avoid revealing information that is embarrassing to the agency involved. However, sometimes such information, if disclosed, could cause harm to DHS programs and operations.

In those situations, I use my discretion to redact information in our public report. However, in order to properly exercise my discretion in an informed and

responsible manner, I require such requests to come from the component or agency head, coupled with an articulation of the *actual, specific* harm that would result from disclosure. Too often, the fear of harm is highly speculative, and fails to balance the need for transparency against the risks of disclosure. Recently, we have had issues with the Transportation Security Administration (TSA) designating certain material as “Sensitive Security Information” (SSI) within an audit report concerning the information technology operations at John F. Kennedy airport in New York. The designation of SSI is in the absolute and unreviewable discretion of the Administrator of TSA and improper disclosure of it carries with it civil and administrative penalties. What was especially troubling about this episode, in my view, was the length of time it took — nearly 6 months — to get a resolution of the issue, the fact that my security experts who wrote the report were confident that the general and non-specific manner in which they wrote the report would not compromise TSA’s computer security, and that the similar information had been published in previous audit reports without objection.

The SSI designation is a useful tool to protect sensitive transportation security information in a manner that gives some flexibility to TSA. However, I am worried that SSI can be misused, as I believe it has been here, to prevent embarrassment. We intend to conduct a formal review of TSA’s administration of the SSI program, and report those results to the Secretary and the congressional committees with oversight over the program.

#### Resources

The budget for our office is relatively tiny — we represent just 0.23 percent of the DHS budget, yet we have an outsize impact on the operation of the Department.

For every dollar given to the OIG, we return more than \$7 in savings, as reflected by the statutory performance measures set forth in the *Inspector General Act*. This vastly understates our performance, because much of our best work — audit and inspections reports that shed light on problematic aspects of programs, for example — don’t carry with it a cost savings, but the value to the American taxpayer is incalculable.

Notwithstanding the demonstrated contributions of our office, our budget has actually shrunk by about 1 percent since FY 2012. As a result, our on-board strength from FY 2012 to this year has decreased by about 15 percent. We have been forced to cut training to less than a third of what we have determined to be appropriate, reducing our ability to do our job and decreasing morale. This includes training for our auditors necessary under the *Inspector General Act*, as well as training for our Special Agents to keep them safe.

Yet, during this same time, DHS' authorized workforce grew by about 5,000, representing a 2.3 percent increase. The Department continues to grow, but the Inspector General's office — the one entity within the Department designed to save money and create efficiency — shrinks.

This, I believe, represents a false economy.

## **Recent and Upcoming Work**

### Unity of Effort

Given its history as a group of very diverse agencies and its complex, multifaceted mission, it is not surprising that the Department continues to face challenges transforming itself into a cohesive single agency. To accomplish its mission, DHS must have a strong, yet flexible, central authority that is able to ensure the components collaborate for maximum effectiveness and cost-efficiency. A unified culture within DHS is necessary for better homeland security, as well as deriving efficiencies from the integration of operations. The Secretary's April 2014 Unity of Effort Initiative is a positive step towards achieving that change. In addition, DHS must strengthen its efforts to integrate management operations under an authoritative governing structure capable of effectively overseeing and managing programs that cross component lines.

We have observed that the components often have similar responsibilities and challenges, but many times operate independently and do not unify their efforts, cooperate, or share information. This situation is sometimes exacerbated by components' disregard for DHS' policies. Together, these problems hamper operations and lead to wasteful spending; for instance,

- Last year, we found that DHS did not adequately manage or have the enforcement authority over its components' vehicle fleet operations to ensure right-sizing, that is, to make certain the motor vehicle fleet includes the correct number and type of vehicles. Without a centralized fleet management information system, the Department has to rely on multiple systems that contain inaccurate and incomplete vehicle data. Additionally, each component manages its own vehicle fleet, making it difficult for the DHS Fleet Manager to provide adequate oversight and ensure the components comply with Federal laws, regulations, policies, and directives. We found that the components were operating underused vehicles, which in FY 2012, cost DHS from \$35 to \$49 million. (*DHS Does Not Adequately Manage or Have Enforcement Authority Over its Component's Vehicle Fleet Operations*, OIG 14-126)
- The Department's failure to adequately plan and manage programs and ensure compliance was also evident in our audit of DHS' preparedness

for a pandemic. We found that the Department did not develop and implement stockpile replenishment plans, sufficient inventory controls to monitor stockpiles, or have adequate contract oversight processes; DHS also did not ensure compliance with its guidelines. Thus, DHS was not effectively managing its stockpile of pandemic equipment and antiviral medications, and components were maintaining inaccurate inventories of pandemic preparedness supplies. Consequently, the Department cannot be certain it has sufficient equipment and medical countermeasures to respond to a pandemic. (*DHS Has Not Effectively Managed Pandemic Personal Protective Equipment and Antiviral Medical Countermeasures*, OIG 14-129)

In FY 2015, we will continue to monitor the Department's efforts toward achieving unity of effort; for example,

- DHS operates a number of training centers to meet the demand for specialized skills across the Department. We have just begun an audit to determine whether DHS' oversight of its training centers ensures the most cost-effective use of resources. Although the Department has made great strides in improving both the quality and availability of training, we believe there may be opportunities to reduce overall cost by identifying redundant capacity.
- Another forthcoming audit focuses on whether DHS has the information it needs to effectively manage its warehouses. Until recently, the components managed their own warehouse needs with little or no joint effort. We expect to publish the final report by June 2015.

#### Acquisition Management

Acquisition management at DHS is inherently complex and high risk. It is further challenged by the magnitude and diversity of the Department's procurements. DHS acquires more than \$25 billion<sup>1</sup> worth of goods and services each year. Although DHS has improved its acquisition processes, many major acquisition programs lack the foundational documents and management controls necessary to manage risks and measure performance. Components do not always follow departmental acquisition guidance, which leads to cost overruns, missed schedules, and mediocre acquisition performance. All of these have an effect on budget, security, and efficient use of resources; for example,

---

<sup>1</sup> According to DHS' *FY 2014 Agency Financial Report*, the Department's FY 2014 obligations for "Contractual Services and Supplies" were about \$22.6 billion and its obligations for "Acquisition of Assets" were about \$3.1 billion.

- U.S. Customs and Border Protection (CBP) did not effectively plan and manage employee housing in Ajo, Arizona, and made decisions that resulted in additional costs to the Federal Government, spending about \$680,000 for each house that was built, which was significantly more than the Ajo average home price of \$86,500. We identified about \$4.6 million CBP spent on the project that could have been put to better use. (*CBP Did Not Effectively Plan and Manage Employee Housing in Ajo, Arizona* (Revised), OIG-14-131)
- The Federal Emergency Management Agency (FEMA) spent about \$247 million over 9 years to implement a Logistics Supply Chain Management System that could not perform as originally planned. Specifically, it cannot interface with the logistics management systems of FEMA's partners, nor does FEMA have real-time visibility over all supplies shipped by its partners. As of March 2014, the Logistics Supply Chain Management System still had not achieved full operational capability. We attribute these deficiencies to inadequate program management and oversight by DHS and FEMA. (*FEMA Logistics Supply Chain Management System May Not Be Effective During a Catastrophic Disaster*, OIG-14-151)
- We recently reported that although CBP's Unmanned Aircraft System program contributes to border security, after 8 years, CBP cannot prove that the program is effective because it has not developed performance measures. The program has also not achieved the expected results — the aircraft are not meeting flight hour goals, and we found little or no evidence CBP has met its program expectations. CBP anticipated using the unmanned aircraft to patrol more than 23,000 hours per year, but the aircraft logged only a combined total of 5,102 hours, or about 80 percent less than what was anticipated. As a result, CBP has invested significant funds in a program that has not achieved the expected results, and it cannot demonstrate how much the program has improved border security. The \$443 million CBP plans to spend on program expansion could be put to better use by investing in alternatives, such as manned aircraft and ground surveillance assets. (*U.S. Customs and Border Protection's Unmanned Aircraft System Program Does Not Achieve Intended Results or Recognize All Costs of Operations*, OIG-15-17)
- In a recent management advisory, we brought to the Department's attention an issue related to CBP's National Aviation Maintenance contract. In 2009, CBP awarded a \$938 million contract to Defense Support Services, LLC to maintain about 265 aircraft to fly approximately 100,000 hours per year. Since the contract was awarded, however, the number of CBP aircraft maintained, annual flight hours, and the average age of the aircraft fleet have decreased, while contract costs increased. We were not able to reconcile maintenance labor hours

with the hours the contractor charged CBP because of inconsistent and unreliable data. (*U.S. Customs and Border Protection's Management of National Aviation Maintenance Activities, Management Advisory*)

Given the magnitude and risks of the Department's acquisitions, we will continue to invest resources in this critical area; for instance,

- In FY 2015, we plan to audit CBP's acquisition of an integrated fixed tower (IFT) system. IFT systems are intended to assist agents in detecting, tracking, identifying, and classifying items of interest along our borders through a series of fixed sensor towers. In February 2014, CBP awarded \$145 million to begin work on the IFT acquisition program, a spin-off of CBP's \$1 billion SBInet acquisition. The acquisition is currently in schedule breach. An audit at this point in the program's life cycle will be useful in identifying program challenges and may help prevent further schedule breaches.
- We are also planning an audit to determine whether the USCG is effectively managing the acquisition of eight Legend-class National Security Cutters, which will replace its 1960s-era High Endurance Cutters. In 2012, GAO reported that the cost of the USCG's plan to acquire the final two cutters is not covered by the USCG's current 5-year budget plan. Thus, there may be a significant mismatch between expected capital investment funding and the estimated life cycle costs for the project.

As these examples illustrate, we are moving towards a more proactive approach by performing audits throughout the acquisition process. This approach would allow for course corrections early in the acquisition lifecycle before full investment in a program occurs — addressing cost, schedule, and performance problems as they occur, thus protecting a long-term investment.

#### Cyber Security and Mission Support

DHS continues to face challenges in protecting its IT infrastructure, as well as ensuring that its infrastructure supports its mission needs and operates efficiently. Recent audits highlight some of these challenges:

- As we reported in December 2014, the Department made progress in improving its information security program. Although it has transitioned to a risk-based approach for managing IT security, the components' lack of compliance with existing security policies and weaknesses in DHS' oversight and enforcement of these policies undermines the Department's efforts. Additionally, DHS and its components continued to operate information systems without the proper authority, hindering

protection of sensitive information. There are some indications that DHS may not be properly inventorying its systems or that components may be procuring or developing new systems independently. Components also did not mitigate security vulnerabilities in a timely manner. (*Evaluation of DHS' Information Security Program for Fiscal Year 2014*, OIG-15-16)

- In July 2014, the National Protection and Programs Directorate (NPPD) made progress expanding its Enhanced Cybersecurity program to share cyber threat information with qualified Commercial Service Providers and ultimately to 16 critical infrastructure sectors. But NPPD's limited outreach and resources slowed the expansion. NPPD also relied on manual reviews and analyses to share cyber threat information, which led to inconsistent quality in cyber threat indicators. (*Implementation Status of Enhanced Cybersecurity Services Program*, OIG-14-119)
- We reported on problems with the Electronic Immigration System (ELIS), which U.S. Citizenship and Immigration Services (USCIS) uses in its adjudication process. The system's 29 commercial software products make it difficult to make changes in the system. Although ELIS was designed to improve efficiency, time studies showed that adjudicating using paper-based processes was faster than using the complex computer system. USCIS staff also said it takes longer to process adjudications using the Enterprise Document Management System (EDMS), which they use to view and search electronic copies of paper-based immigration case files. Although digitizing files reduces document delivery time, staff said using EDMS is burdensome. (*U.S. Citizenship and Immigration Services Information Technology Management Progress and Challenges*, OIG-14-112)
- In March 2014, we reported on EINSTEIN 3 Accelerated (E<sup>3</sup>A), an automated process for collecting network security information from participating Federal agencies. NPPD has begun deploying E<sup>3</sup>A and expects to reach full operating capability by the end of FY 2015. However, we concluded that NPPD needs to strengthen its monitoring of E<sup>3</sup>A's implementation and improve its ability to handle personally identifiable information as the program matures. (*Implementation Status of EINSTEIN 3 Accelerated*, OIG-14-52)

#### Stewardship of Taxpayer Dollars

##### *Financial statement audits*

Congress and the public must be confident that DHS is properly managing its finances to make informed decisions, manage government programs, and implement its policies. In FY 2014, DHS obtained an unmodified (clean)

opinion on all financial statements for the first time in its history. This was a significant achievement that built on previous years' successes; yet, it required considerable manual effort to overcome deficiencies in internal control and a lack of financial IT systems functionality.

Many key DHS financial systems do not comply with Federal financial management system requirements. Limitations in financial systems functionality add substantially to the Department's challenge in addressing systemic internal control weaknesses and limit its ability to leverage IT systems to process and report financial data efficiently and effectively. In FY 2015 and beyond, DHS will need to sustain its progress in achieving an unmodified opinion on its financial statements and work toward building a solid financial management internal control structure.

*Grant Management (FEMA)*

FEMA continues to experience challenges managing the immense and risky disaster assistance program. Currently, every state and most of the U.S. possessions have open disasters that include more than 100,000 grant applicants spending more than \$50 billion on more than 600,000 disaster assistance projects. Last year, we issued *Capping Report: FY 2013 FEMA Public Assistance and Hazard Mitigation Grant and Subgrant Audits (OIG-14-102-D)*, which summarized the results of our disaster assistance audits for the last 5 years. Of the \$5.9 billion we audited, disaster assistance recipients did not properly spend \$1.36 billion, or an average of 23 percent, of the disaster assistance grants.

The Department also provides Homeland Security Grant Program (HSGP) funds to state, territory, local, and tribal governments to enhance their ability to respond to terrorist attacks and other disasters. Since 2005, we have conducted 74 separate audits covering more than \$7 billion in HSGP funds awarded to all 50 States, 6 urban areas, 5 U.S. territories, and the District of Columbia. Although we determined that in most instances the states complied with applicable laws and regulations, we issued more than 600 recommendations for improvement to FEMA, almost 90 percent of which have been resolved. Most of the recommendations were related to strategic homeland security planning, timely obligation of grant funds, financial management and reporting, and sub-grantee compliance monitoring.

We will continue to look for ways to help FEMA improve grant management in FY 2015. For instance, we are currently undertaking a capstone review to measure the impact of FEMA's corrective actions as they specifically address these recurring challenges. We anticipate that our assessment will further strengthen the level of national preparedness by helping to better inform the agency's future administration and investment of taxpayer dollars.



We are also conducting an audit of approximately \$2 billion awarded through FEMA's Assistance to Firefighters Grant and Staffing for Adequate Fire and Emergency Response Grants programs. These grants are awarded directly to fire departments (volunteer, combination, and career), unaffiliated Emergency Medical Service (EMS) organizations, or volunteer firefighter interest organizations. The audit will determine if FEMA ensures that these grant funds are expended appropriately.

#### Integrity of operations

We supervise the internal affairs of the Nation's largest police force — CBP — and the second largest investigative agency in the country — ICE — both directly and indirectly through our liaison with the components' internal affairs units. The Department has hundreds of thousands of Federal and contract employees who are responsible for protecting and securing the Nation. Although the vast majority of DHS employees are honest and dedicated, the few who are corrupt can do enormous damage to the Department's programs and national security.

In FY 2014, we handled 16,281 hotline complaints and closed 760 investigations. Last year our work resulted in 142 arrests, 87 indictments, and 112 convictions. This included our joint investigation with the FBI and USCG Investigative Service, which resulted in a life sentence for a USCG civilian employee who murdered two USCG officers at a remote station in Alaska. In another case, we investigated a TSA supervisory transportation security officer in the U.S. Virgin Islands who was assisting a drug smuggling organization to bypass security at an airport. He was sentenced to 87 months imprisonment and 24 months of supervised release.

We also work in partnership with the FBI in corruption cases along the Southwest Border and are an integral part of the Border Corruption Task Forces in Buffalo, Detroit, Houston, Newark, the Rio Grande Valley, Laredo, Tucson, Yuma, Sierra Vista, and San Diego. The Border Corruption Task Forces leverage our resources to combat corruption that threatens our National Security. For instance, a recent Task Force investigation resulted in a 180-month prison sentence for a Border Patrol Agent who worked in the intelligence unit and sought to provide sensitive law enforcement information to smugglers. Intelligence materials such as border sensor maps, combinations to locked gates and identities of confidential informants were delivered to the supposed smugglers who were actually undercover agents.

## Challenges

### Meeting the Risk

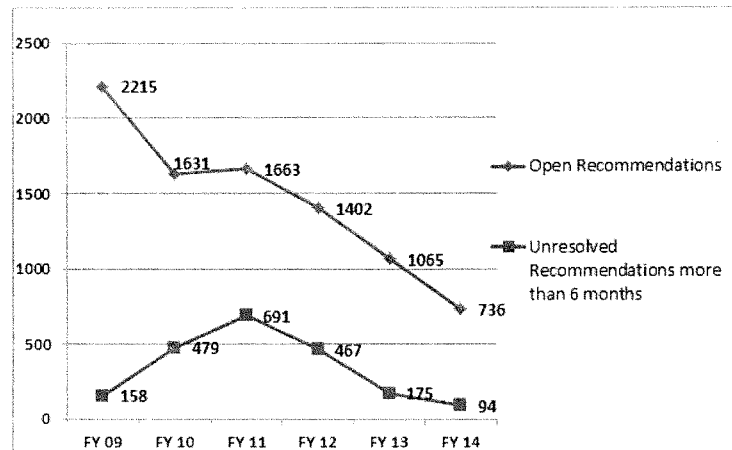
We must focus our limited resources on issues that make a difference, especially those that may have a significant impact on the Department's ability to fulfill its strategic missions. At the beginning of each year, we initiate a risk-based planning process by identifying high impact programs and operations that are critical to the Department's mission or integrity. Once we identify the high impact areas, we evaluate all the projects that have been proposed throughout the previous year.

As we planned our work for FY 2015, we began with two priorities: to aid the Department in achieving its critical missions and priorities and to ensure the proper stewardship and integrity of Department programs and resources. We also conduct legislatively mandated work and make an earnest effort to address the concerns of Congress and the Department, along with our other stakeholders. In FY 2015, our work will focus on determining the effectiveness of the Department's efforts to (1) prevent terrorism and enhance security; (2) enforce and administer our immigration laws; (3) secure and manage our borders; (4) strengthen national preparedness and resilience to disasters; and (5) safeguard and secure the Nation's cyberspace. We will also continue our efforts to promote management stewardship and ensure program integrity.

Our Annual Performance Plan and our current list of Ongoing Projects are published on our website to better inform the Congress and the public regarding our work.

### Audit Follow-up

Audit follow-up is an integral part of good management; it is a shared responsibility of both auditors and agency management officials. The Department has made great strides in closing recommendations. For example, as shown in the following chart and appendix 1, DHS reduced the number of unresolved, open recommendations more than 6 months old from a high of 691 in FY 2011 to 94 in FY 2014. In parallel, the number of recommendations categorized as "resolved-open" (recommendations that the Department agreed to but has not yet implemented) steadily declined from a high of 1663 in FY 2011 to 736 in FY 2014. DHS' goal is to have zero financial statement-related recommendations categorized as "open-unresolved" by March 30, 2015. This progress largely results from increased focus by the Department through the audit liaisons and increased communication with our office; we sincerely appreciate the personnel and resources the Department has dedicated to this effort.

**Recommendation Trends FY 2009 - 2014**

We need to do more to ensure that Department and component management fully implements corrective actions. To that end, we are initiating “verification reviews.” These limited-scope reviews will focus on our most crucial recommendations, examining whether the recommendations were implemented and whether the actions taken had the intended effect; for example,

- One of our verification reviews will determine if USCG implemented recommendations from our 2012 audit on the USCG’s Sentinel Class Fast Response Cutter (FRC). In September 2008, the USCG awarded an \$88.2 million fixed-price contract for the detailed design and construction of the lead FRC. The estimated \$1.5 billion contract contains 6 options to build a maximum of 34 cutters. We found that USCG’s schedule-driven strategy allowed construction of the FRCs to start before operational, design, and technical risks were resolved. Consequently, six FRCs under construction needed modification, which increased the total cost of the acquisition by \$6.9 million and caused schedule delays of at least 270 days for each cutter. This aggressive acquisition strategy also allowed the USCG to procure 12 FRCs before testing in actual operations. We made four recommendations designed to eliminate this risk in future acquisitions and one recommendation to address the current FRC acquisition. (*U.S. Coast Guard’s Acquisition of the Sentinel Class – Fast Response Cutter*, OIG-12-68)
- We will also follow up on the recommendations from our report on DHS’ oversight of interoperable communications. During the audit, we tested

DHS radios to determine whether DHS components could talk to each other in the event of an emergency. They could not. Only 1 of 479 radio users we tested — or less than 1 percent — could access and use the specified common channel to communicate. Further, of the 382 radios tested, only 20 percent (78) contained all the correct program settings for the common channel. In our verification review, we will determine whether the Department created a structure with the necessary authority to ensure that the components achieve interoperability, as well as policies and procedures to standardize Department-wide radio activities. (*DHS' Oversight of Interoperable Communications*, OIG-13-06)

We believe verification reviews such as these will result in increased commitment by the components to enact change.

### **Working with Congress**

We are proud of our work and the success we have had pointing out challenges the Department needs to overcome and recommending ways to resolve issues and improve programs and operations. However, it is your legislative efforts that enhance the significance of our work and create an even greater impact on the Department. By introducing and passing legislation, you show that you trust in us and have faith in our work. This validation spurs those who need to act to ensure we protect this Nation and use taxpayer dollars effectively; for example,

- S. 159, which was referred to your committee on January 13, 2015, resulted from our recent report on CBP's Unmanned Aircraft System (UAS) Program. The bill requires DHS to use its UAS for surveillance of the entire Southern border and report performance indicators such as flight hours, detections, apprehensions, and seizures. It also prevents DHS from procuring additional UAS until it operates its current fleet for at least 23,000 hours annually.
- H.R. 719, the TSA Office of Inspection Accountability Act of 2015, which passed the House on February 10, 2015, resulted from our report on TSA's Office of Inspection. It requires TSA to reclassify criminal investigators if less than 50 percent of their time is spent performing criminal investigative duties. The bill also requires the Assistant Secretary to estimate the cost savings to the Federal government resulting from such reclassification.
- H.R. 615, which passed the House on February 2, 2015, resulted from our report on DHS's Oversight of Interoperable Communications. This bill would amend the *Homeland Security Act of 2002* to require the

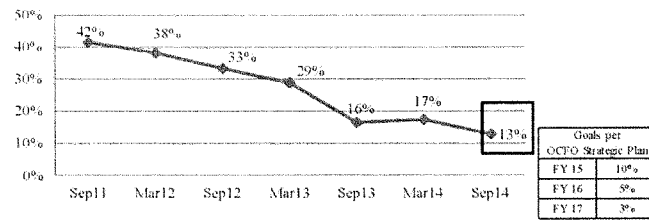
Department to take administrative action to achieve and maintain interoperable communications capabilities among its components.

We appreciate your efforts and hope that we can continue to count on you in the future. For our part, we intend to continue accomplishing our mission to the best of our ability.

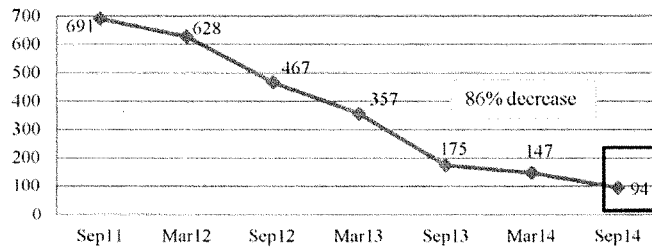
Mr. Chairman, this concludes my prepared statement. I welcome any questions you or other Members of the Committee may have.

**Appendix 1**  
Status of OIG Recommendations

**Percentage of Total Open OIG Recommendations  
Unresolved More than 6 Months\***



**Total Open OIG Recommendations  
Unresolved More than 6 Months\***



\*Includes performance, financial statement, and grant-related disaster assistance

**Appendix 2**

## OIG Reports Referenced in This Testimony

DHS Does Not Adequately Manage or Have Enforcement Authority Over its Component's Vehicle Fleet Operations, OIG 14-126, August 2014

DHS Has Not Effectively Managed Pandemic Personal Protective Equipment and Antiviral Medical Countermeasures, OIG 14-129, August 2014

CBP Did Not Effectively Plan and Manage Employee Housing in Ajo, Arizona (Revised), OIG-14-131, September 2014

FEMA Logistics Supply Chain Management System May Not Be Effective During a Catastrophic Disaster, OIG-14-151, September 2014

U.S. Customs and Border Protection's Unmanned Aircraft System Program Does Not Achieve Intended Results or Recognize All Costs of Operations, OIG-15-17, December 2014

U.S. Customs and Border Protection's Management of National Aviation Maintenance Activities, CBP Management Advisory, January 2015

Evaluation of DHS' Information Security Program for Fiscal Year 2014, OIG-15-16, December 2014

Implementation Status of Enhanced Cybersecurity Services Program, OIG-14-119, July 2014

U.S. Citizenship and Immigration Services Information Technology Management Progress and Challenges, OIG-14-112, July 2014

Implementation Status of EINSTEIN 3 Accelerated, OIG-14-52, March 2014

Capping Report: FY 2013 FEMA Public Assistance and Hazard Mitigation Grant and Subgrant Audits, OIG-14-102-D, June 2014

U.S. Coast Guard's Acquisition of the Sentinel Class – Fast Response Cutter, OIG-12-68, August 2012

DHS' Oversight of Interoperable Communications, OIG-13-06, November 2012

Transportation Security Administration Office of Inspection's Efforts To Enhance Transportation Security, OIG-13-123, September 2013

**United States Senate**  
**Committee on Homeland Security and Governmental Affairs**



**Statement for the Record**  
**Improving the Efficiency, Effectiveness, and Independence**  
**of Inspectors General**

**The Honorable Patrick P. O'Carroll, Jr.**  
**Inspector General, Social Security Administration**

**February 24, 2015**



Good morning, Chairman Johnson, Ranking Member Carper, and Members of the Committee. I would like to acknowledge and welcome the new Members of the 114<sup>th</sup> Congress and those of you who are new to this Committee. Thank you for the invitation to participate in this discussion on improving the efficiency, effectiveness, and independence of Federal inspectors general. With my colleagues in the IG community, I appreciate the opportunity to share with you our organizations' initiatives and priorities, as well as the forum to suggest solutions to challenges we face in achieving our goals.

#### **The Inspector General at Social Security**

The Office of the Inspector General (OIG) at the Social Security Administration (SSA) was created in March 1995, after President Clinton signed legislation that re-established SSA as an independent agency. As we approach our 20<sup>th</sup> anniversary next month, we can say with confidence that we have achieved, and continue to achieve, our mission of promoting the integrity and efficiency of SSA's programs and operations. I'm honored to work with an outstanding team of auditors, investigators, attorneys, and support personnel nationwide, who share a steadfast commitment to ensuring public confidence in Social Security. Their efforts over the last 20 years have contributed to the OIG's reputation for conducting effective audits of SSA's operations and leading high-impact investigations of Social Security fraud, waste, and abuse.

A snapshot of our recent accomplishments illustrates the work we do every day to improve SSA's operations and protect Social Security for the many citizens who depend on it:

- Our auditors issue between 80 and 100 reports every year on various issues affecting Social Security; over the last three fiscal years, SSA has implemented 86 percent of OIG recommendations aimed at improving the Agency's operational integrity and efficiency. For example, we previously recommended that SSA dedicate resources<sup>1</sup> to timely complete work-related continuing disability reviews (CDRs) and assess overpayments resulting from work activity; SSA responded with various improvements to its work-CDR process and has identified and prevented millions of dollars of disability overpayments in the process.
- We operate one of the most productive Fraud Hotlines in the Federal Government; our Hotline personnel receive and process Social Security fraud reports from across the country via phone, fax, U.S. mail, and, increasingly, through the Internet. In fiscal year (FY) 2014, we received over 120,000 allegations of fraud; about half of those were reported through our Fraud Hotline. Our criminal investigators took direct action on about 5,500 of those Hotline allegations, and we referred nearly 16,000 more to SSA for further development. Of the 16,000 referred to SSA, the agency identified almost \$2.8 million in overpayments.
- Our roughly 250 special agents across the United States enforce the many Federal laws pertaining to Social Security fraud; they close about 8,000 cases every year, leading to hundreds of millions of dollars of recoveries, restitution, and projected Social Security savings. We regularly collaborate with other Federal OIGs on cases with overlapping jurisdiction; for example, in January, after a joint investigation with the Department of Agriculture OIG and the Department of Labor OIG, a Rhode Island man was sentenced to three years' probation and restitution to all three agencies after he pled guilty to stealing \$80,000 in government benefits. Moreover, SSA has delegated its authority to us to impose civil monetary penalties against

---

<sup>1</sup> For FY 2015, SSA's appropriation includes \$1.396 billion in dedicated funding for CDRs and SSI redeterminations.

individuals for providing false information to, or withholding information from, SSA to obtain or maintain their benefits. With this authority, in FY 2014 we imposed \$21.2 million in penalties and assessments. This is a powerful tool that supplements our ability to secure criminal prosecutions and provides us with a way to pursue fraud cases that might otherwise go unaddressed.

The SSA OIG is an active member of the Council of Inspectors General on Integrity and Efficiency (CIGIE). For the past five years, our organization has served as the CIGIE liaison to work with the Office of Management and Budget (OMB) on agency compliance with the *Improper Payments Elimination and Recovery Act of 2010* (IPERA) and other legislation and mandates aimed at reducing Federal improper payments. Through CIGIE, we have built relationships throughout the IG community, and we appreciate opportunities to collaborate and share oversight best practices.

#### **OIG Priorities and Initiatives**

Oversight of Social Security presents a unique set of challenges among Federal inspectors general. For perspective, during FY 2014, SSA paid over \$893 billion, to an average of 64 million beneficiaries each month. Given the size of its benefit programs, the number of customers it has, and the complex policies and systems it employs, SSA must balance its responsibilities of timely and accurate service to the American public with proper and effective stewardship of taxpayer funds. Similarly, we must balance our oversight efforts, understanding that both service and stewardship are worthy of our focus.

Of course, Social Security program integrity remains our top priority. We work to improve the integrity of SSA's programs by helping the agency identify and reduce the amount of improper payments it makes each year. In its FY 2014 Agency Financial Report, SSA reported, for FY 2013, \$3 billion in improper payments (over- and underpayments) in its Old Age, Survivors, and Disability programs, representing 0.36 percent of payments made. SSA also reported \$5.1 billion in improper payments in the Supplemental Security Income (SSI) program, representing 9.22 percent of payments made. However, it is important to note that these totals reported by SSA do not include payments made as a result of fraud that has not been detected—so we do not know the full extent of improper payments made. Detecting or preventing those fraudulent payments—and addressing systemic vulnerabilities that may contribute to them—these are all top priorities for our auditors and investigators.

Thus, we strive to hold SSA accountable to both its customers and American taxpayers, and we take seriously our independent oversight role. At the same time, we recognize the importance of, and value in, forging a productive relationship with agency leadership and decision-makers to combat fraud and improve program integrity. We've recently partnered with SSA on several initiatives to that end:

- We and SSA have committed to expand the successful Cooperative Disability Investigations (CDI) program, which combines OIG, SSA, state Disability Determination Services (DDS), and local law enforcement expertise to identify suspicious or questionable initial disability claims for additional review, and prevent disability fraud and waste from ever occurring. The CDI program currently consists of 28 units in 24 states and the Commonwealth of Puerto Rico; we and SSA plan to open four additional CDI units this year.
- Through the Fraud Prosecution Project, SSA currently has 12 staff attorneys assigned to work in United States Attorney's Offices across the country as Special Assistant U.S. Attorneys, who focus their efforts on prosecuting our Social Security fraud cases that might otherwise be declined for Federal prosecution. From FYs 2003 through 2014, we secured over \$74.1 million

in restitution orders and 1,229 convictions or guilty pleas through SSA's Fraud Prosecution Project. SSA recently hired an additional 14 attorneys to be part of this successful effort.

- We and SSA are currently analyzing data from fraudulent disability claims present in large-scale schemes we have previously identified. We are working with SSA personnel to identify trends and patterns, and will apply those findings to existing and future claims to identify and prevent fraud. Based on our and SSA's work thus far, we believe predictive analytics can be an effective fraud-fighting tool.
- In recent years, we have investigated and closed several high-dollar cases of electronic Social Security fraud; identity thieves have used stolen personally identifiable information to create fraudulent online profiles in beneficiaries' names and then redirect Social Security payments to alternate bank accounts. We have reviewed and continue to review SSA's electronic services, and we are working closely with SSA to study these cases and develop ways to flag potentially fraudulent activity associated with beneficiaries' online profiles and payment information.

We also direct considerable resources toward assessing SSA's operational efficiency. We feel it is critical that SSA properly plans to modernize and streamline its operations to effectively serve its growing customer base. To that end, we regularly review and make recommendations related to the agency's IT infrastructure, systems security, and strategic planning.

- We continue to evaluate SSA's rollout of the Disability Case Processing System (DCPS), a nationwide computer system that is expected to improve effectiveness and efficiency in making timely and accurate disability decisions. After an outside consultant hired by SSA found quality and usability issues with DCPS last year, we reviewed the project and concluded that SSA did not properly define system requirements or engage its end-users throughout development, leading to project delays. We will issue additional reports on DCPS, with various project observations and recommendations.
- In September 2014, SSA completed construction on its new data storage center, the National Support Center (NSC), in Urbana, Maryland. The NSC will replace SSA's National Computer Center (NCC), and data migration should be complete by the middle of 2016. We have followed this project closely for several years; a timely and efficient transition from the NCC to the NSC is necessary to avoid the risk of an extended outage that could affect SSA's services.
- Each year, we work with an independent certified public accounting (CPA) firm to audit SSA's financial statements; for many years SSA has won awards for its financial reporting. Recently, though, the CPA firm identified significant deficiencies in SSA's information systems controls and its calculating, recording, and prevention of overpayments. The CPA firm has made several recommendations to address these deficiencies, which we support. SSA must promptly address these issues.

#### **Legislative Proposals**

I've outlined our various responsibilities and ongoing priorities; nevertheless, we recognize that we can always do more. To help us confront challenges and achieve our goals, I would like to mention several legislative proposals for your consideration.

The IG community is pursuing an exemption to the *Computer Matching and Privacy Protection Act of 1988* (CMPPA), which would exempt OIGs from obtaining a formal matching agreement before matching data with other entities to identify fraud and waste. In our case, we must obtain matching agreements through SSA's Data Integrity Board, is a laborious process that can take a year, or sometimes longer, to complete. Thus, the CMPPA requirements compromise our independence and unreasonably delay our audit and investigative efforts.

For example, in 2013, our auditors matched Department of Homeland Security travel data against SSA's records to identify SSI recipients who were outside the United States for more than 30 consecutive days, making them ineligible for SSI. Based on the data match, we estimated about 35,000 SSI recipients were overpaid about \$152 million from September 2009 to August 2011. This audit was done for *statistical* purposes, without a matching agreement, because we knew the agreement process could take a long time. Thus, while we made a recommendation to SSA surrounding the issue, we could not forward the names of the SSI recipients we identified in the report so that SSA could assess and recover the overpayments, or so that our investigators could potentially pursue criminal prosecution.

Also, in 2010, our auditors worked with the Department of Labor to compare workers' compensation data to SSA records. We identified Federal employees who received Disability Insurance (DI) the same year they received Federal Employees' Compensation Act (FECA) payments; SSA in some situations did not consider the beneficiaries' FECA payments when calculating their DI payments. This data match identified about \$43 million in overpayments to 961 beneficiaries, but without a formal matching agreement, we could not provide the names of the beneficiaries to SSA for administrative action or to our investigators.

The matching agreement process has also stalled several investigative projects that could identify significant amounts of Social Security overpayments. As one example, we have not been able to pursue a project with the Department of Transportation OIG that would match Social Security records with Transportation's data to identify Social Security beneficiaries with commercial driver's licenses, and then determine if licensed commercial drivers concealed current work activity to fraudulently collect disability benefits.

In 2010, the Department of Health and Human Services and its OIG obtained an exemption for data matches designed to identify fraud, waste, and abuse. We believe all OIGs should be exempt for this purpose.

An exemption to the *Paperwork Reduction Act* (PRA) for general investigations or audits would also benefit the OIG community. In our case, audits of Social Security's programs inherently involve the need to collect identical information from individual beneficiaries *not specifically targeted*, and at times, other members of the public. (A PRA exemption exists for information requests from specific individuals or entities for investigations or audits.) The PRA requires approval from a "senior official" of the agency and OMB. This is an impediment to our independence. In addition, the process may be protracted, affecting our ability to timely conduct audits and investigations of interest to members of Congress; surveys generally must also be posted in the Federal Register, and the public must have an opportunity to comment. This hinders our ability to respond quickly to stakeholders and complete audit reports on critical issues.

With a PRA exemption for general audits, we could interview large groups and report on their interactions with Social Security, to help improve SSA's customer service. For example, in one potential

audit, we would like to interview representative payees serving beneficiaries who have been assessed multiple overpayments, to determine if the representative payees are aware of, and adhere to, SSA's reporting regulations and requirements. With a PRA exemption, we could complete this audit without delay and determine if SSA needs additional representative payee outreach on reporting requirements, potentially avoiding future overpayments.

Finally, we continue to support legislation to establish an agency revolving fund for integrity activities to help ensure payment accuracy. IPERA allows up to 5 percent of the amounts collected from recovery auditing by an agency to be used by the OIG of that agency; however, this provision applies only to recoveries of overpayments made from discretionary appropriations, and in our case, that applies only to recoveries of overpayments made from SSA's administrative expenses, not from its benefit programs.

We have proposed an indefinite appropriation to make available to SSA 25 percent, and to OIG 5 percent—or a sum certain—of actual overpayments collected, for use solely on integrity activities (like CDRs and CDI units) that provide a significant return on investment. An integrity fund could prove especially effective for deceased payee fraud investigations, a significant workload for our special agents. Last year, we investigated more than 600 people who misused benefits of the deceased, and convictions of some of those individuals generated about \$35 million in restitution, fines, civil judgments, and Social Security overpayment recoveries. A portion of those recoveries from deceased payee fraud investigations could be used to invest in any of the anti-fraud initiatives I've discussed.

#### **Conclusion**

As my fellow Inspectors General and I have discussed this morning, skillful, independent, and timely oversight is paramount to the integrity and efficiency of all Federal agencies. My office and other Federal inspectors general have a long history of successfully identifying critical issues, recommending solutions, and improving government operations—with the ultimate goals of providing better public service and ensuring that taxpayer funds are used appropriately.

As you have heard, we have identified various tools that can streamline our efforts to identify systemic weaknesses and detect fraud, waste, and abuse. I appreciate the opportunity to share these suggestions with you, and my office looks forward to working with your Committee as you consider these proposals.

Thank you again for the invitation to testify today, and I am happy to answer any questions.

2/24/2015

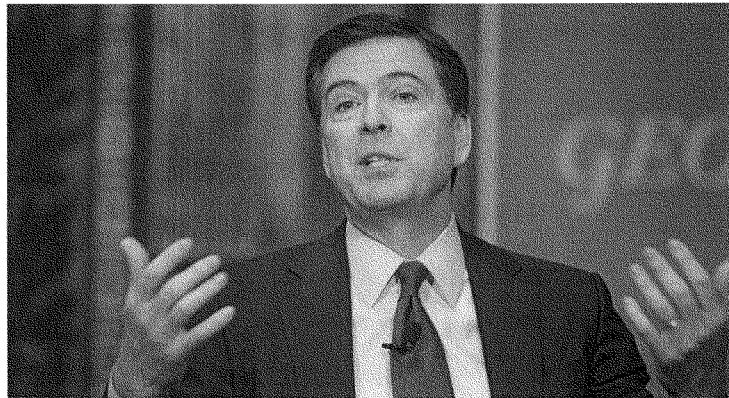
New FBI numbers show decline in black agent ranks - Josh Gerstein - POLITICO

Submitted by Sen. Booker

POLITICO

## New FBI numbers show decline in black agent ranks

By JOSH GERSTEIN | 2/23/15 6:00 PM EST | Updated 2/23/15 7:16 PM EST



FBI Director James Comey delivered a landmark speech on racial issues earlier this month, acknowledging that unconscious racial biases pervade police work. | AP Photo

The diversity of the FBI's special agent ranks slipped further in the past three years, according to key statistical measures just released by the nation's premier law enforcement agency.

African Americans accounted for 4.5% of the special agents at the end of 2014, the FBI disclosed, down from 4.74% in early 2012 and 5.6% in 1997.

Hispanic agents made up 6.81% of the force in December 2014, down from 7.14% in 2012 and 6.9% in 1997.

The numbers were quietly released in a posting on the FBI website after some high-profile attention in recent weeks to the agency's problems recruiting a more diverse

workforce.

FBI Director James Comey delivered a landmark and widely-hailed speech on racial issues earlier this month, acknowledging that unconscious racial biases pervade police work — particularly in low-income communities that draw a lot of police attention.



ALSO ON POLITICO

**Congress inches closer to cliff**

BURGESS EVERETT and MANU RAJU

During a question-and-answer period after his address, Comey said he believes it's important that law enforcement personnel be diverse. He also acknowledged that the FBI hasn't done enough to hire and retain racial minorities and women as part of the elite force of special agents.

"It is an imperative for all of us in law enforcement to try to reflect the communities we serve," said Comey, who took over as FBI director in September 2013. "Big challenge for the FBI — the FBI is overwhelmingly white and male among my agent force. ... I have to change the numbers."

Shortly after Comey's talk, POLITICO reported that the percentage of African American special agents declined over the past two decades, despite a series of high-profile lawsuits in which blacks, Latinos and women challenged FBI employment practices — especially regarding promotions and assignments.

The story was based on three-year old statistics, because those were the only ones available on the FBI website and the agency did not respond to requests for newer data in the days after Comey's speech. The new numbers showing continued declines were posted sometime between Sunday morning and midday Monday, according to internet search engines.

"It's discouraging to think they haven't greatly improved," said Temple University law professor David Kairys, who pursued one of the first racial discrimination suits against the bureau. "They clearly had a problem from their origins going back to J. Edgar Hoover who resisted attempts to integrate. I would just hope they'd get beyond

that, so this is disappointing.”

The FBI did a bit better in relative terms in recent years with recruiting and retaining women agents and Asians, the new data show.



ALSO ON POLITICO

**Obama advances rule hitting Wall Street, financial advisers**

DAVID NATHER and PATRICK TEMPLE-WEST

The number of women special agents held roughly steady, at 2,631 in late 2014, just five agents fewer than in early 2012. However, due to a drop of about 300 in the size of the overall agent force, the proportion of women edged lower, to 19.15% from 19.55%.

Asian agents accounted for 4.33% of the force in 2014, up from 4.18% three years earlier. The number of agents and personnel described as “multi-racial” has ticked up steadily in recent years, but still represents less than 1% of the workforce.

FBI’s non-agent personnel have long been more diverse than the ranks of special agents.

The latest data show that the total percentage of minorities in the FBI’s professional work force rose in the past three years, to 29.09% from 28.91%.

However, the raw number of minority staff actually dipped slightly amid a somewhat larger decline in the total number of personnel.





**U.S. Department of Justice**

Office of the Inspector General

---

April 17, 2015

The Honorable Ron Johnson  
Chairman  
Committee on Homeland Security  
and Governmental Affairs  
United States Senate  
344 Dirksen Senate Office Building  
Washington, DC 20510

Dear Mr. Chairman:

I am writing in response to your letter dated March 11, 2015, in which you forwarded questions for the record following the recent hearing on "Improving the Efficiency, Effectiveness, and Independence of Inspectors General" before the Committee on Homeland Security and Governmental Affairs. In response to your request, please find the enclosed responses to questions posed by Senators McCaskill and Booker.

Thank you for your support for my Office and the Council of Inspectors General. If you have further questions, please feel free to contact me, or my Chief of Staff, Jay Lerner, at (202) 514-3435.

Sincerely,

A handwritten signature in black ink, reading "Michael E. Horowitz", is positioned above the printed name.

Michael E. Horowitz  
Inspector General, Department of Justice  
Chair, Council of Inspectors General for  
Integrity and Efficiency

Enclosure

cc: The Honorable Thomas Carper  
Ranking Member, Committee on Homeland Security and  
Governmental Affairs  
United States Senate

**Post-Hearing Questions for the Record  
Submitted to Hon. Michael Horowitz  
From Senator Claire McCaskill**

**“Improving the Efficiency, Effectiveness, and Independence of Inspectors General”**

**Tuesday, February 24, 2015**

I understand that the CIGIE Audit Committee is conducting a pilot to peer review IG work products that are not considered audits.

1. What is the status of the pilot program?

*Response: At present, the Council of Inspectors General on Integrity and Efficiency (CIGIE) maintains a robust peer review program for both the Audit divisions of the Offices of the Inspector General (OIGs) as well as the Investigations divisions. These programs are overseen and managed by the Council's Audit and Investigations Committees respectively. These peer review programs already have well-established guidelines and quality standards for conducting peer reviews of the OIG's Audit and Investigations processes. The Council's Audit Committee policy statement on the system of quality control and the peer review guidance was first issued in August 1989, and is periodically revised. Every OIG currently has its Audit functions subject to peer review every three years, and all OIGs with statutory law enforcement authority under the Inspector General Act, as amended, have their Investigations functions subject to peer review every three years as well. Both peer review programs for Audit and Investigations are ongoing.*

*Similarly, the Inspections & Evaluation (I&E) Committee of the Council of Inspectors General has initiated a pilot program to develop a peer review process for OIGs' Inspections and Evaluation function. To date, there have been two rounds of reviews conducted under the pilot in which OIGs' I&E divisions were examined and assessed. These reviews have provided valuable insight into the development of the I&E peer review process. The Committee is currently soliciting volunteers to serve as reviewers and reviewees for the third round of reviews and finalizing refinements to the peer review pilot based on issues that surfaced during the first two rounds. The Working Group on Policy for the peer review pilot program is also preparing recommendations for the I&E Committee on issues underlying the process.*

2. What are the next steps?

*Response: The I&E Committee plans to commence the third round of the pilot peer review program this summer. This third round of the program will test the improvements to the peer review processes that were identified in the previous rounds. In this way, we can continue to revise and refine the process in order to ensure consistency among IGs for conducting peer reviews of I&E offices. Following this third round, the I&E Committee will re-evaluate the peer review pilot program*

*and will make recommendations for consideration by the Council of Inspectors General.*

3. When do you expect to be at a point where every IG is having at least some of its work product audited regularly?

*Response: Every OIG currently has its Audit functions subject to peer review every three years, and all OIGs with statutory law enforcement authority under the Inspector General Act, as amended, have their Investigations functions subject to peer review every three years as well. Both peer review programs for Audit and Investigations are ongoing. The I&E Committee expects to finish the evaluation of the I&E pilot and make recommendations to the Council of Inspectors General on the appropriate form and timeframes for an I&E peer review in 2016.*

Several reform options have been explored regarding these small IG offices, including everything from consolidation to expanding CIGIE's role to provide these smaller agencies with additional resources.

4. Do you have an opinion on how we can maximize the efficiency and effectiveness of these smaller IGs?

*Response: The Council of Inspectors General has an important role to play in collaborating with smaller IG offices to address resource issues that they may have, and to consider ways to maximize their effectiveness. To that end, I am pleased that a group of IGs, comprised of IGs of all sizes, is in the developmental stages of a shared platform program which would provide IG investigators, auditors, program managers, and evaluators in all OIGs, large and small, with capabilities to request services from partner IGs. The envisioned sharing will formalize and improve the efficiency of the practice of sharing investigative services, referencing services, specialized audit services, and technical services such as polygraphs and data analysis. As CIGIE Chair, I look forward to continuing to support this effort.*

*In addition, some smaller DFE IGs have mutually agreed with other IG offices through periodic memoranda of understanding to share legal counsel, audit referencing assistance, or investigative resources. Through the years, IGs of all sizes have resorted to resource sharing when a conflict arose or there was a need for a specialized expertise, such as handwriting analysis, or profiling, not developed in their own office. As Chair of the Council of IGs, I look forward to supporting the expansion and further development of these efforts, and CIGIE will continue to develop cross-cutting projects and initiatives in order to achieve greater efficiency and effectiveness.*

*In addition, in order to examine the issues of proper oversight over small Government agencies, a group of Inspectors General (IGs), of which I was a member, formed a working group last year to formulate a risk-based approach for achieving effective, efficient, and economical oversight of small Government agencies. The primary objective of the working group was to raise the level of informed dialogue as a*

*foundation for collegial deliberations and analysis among all stakeholders. The working group focused on 56 Executive Branch entities without direct OIG oversight; these entities have combined budgets in excess of \$1 billion. While many of these mostly small Government entities share common characteristics, implementation of a one-size-fits-all approach for OIG oversight would not be practicable and would fail to embody the OIG core values of efficiency, effectiveness, and economy. Over a period of several months, the members of the working group focused their experience and expertise on identification and resolution of issues central to establishing risk-based, right-sized oversight of the mostly small entities without OIGs.*

*Earlier this year, the working group compiled our findings into a Proposal for Oversight of Certain Entities Without an Office of Inspector General that recommended two possible models for risk-appropriate frameworks for these agencies. The first recommended model for small entities with a low level of apparent risk involves a central hotline-focused framework for OIG oversight. Each small entity would be paired with a legislatively-designated OIG (Designated OIG). Additionally, a central administrator would be designated to manage a coordinated Central Hotline and refer allegations of fraud, waste, abuse, and whistleblower retaliation to the appropriate OIG. A second proposed model would include creating four new OIGs for traditional oversight of six entities and expanding the authorities and responsibilities of five existing OIGs to include traditional oversight of eleven entities with closely aligned missions, activities, and risks. The working group's proposal has been distributed to congressional committees for consideration. The working group intended this effort to contribute to further consideration of enhanced right-sized OIG oversight to prevent and detect fraud, waste, and mismanagement in small agencies currently without OIGs.*

5. What do you think is the proper role for CIGIE to play in providing additional resources for these IGs?

*Response: The Council of Inspectors General has an important role to play in making sure that all IGs have appropriate resources to conduct their proper oversight activities. As Chair of the Council of Inspectors General, I intend to work within the IG community to address the needs of smaller OIGs and strive for greater efficiency and effectiveness in the use of its resources. This can be accomplished through existing efforts such as the shared platform (discussed above), Council training efforts, and collaboration by IGs on cross-cutting initiatives. In addition, the Council has sought to reduce the burden of certain reporting requirements on small OIGs. Reducing annual reporting mandates by addressing applicable thresholds has been helpful to small OIGs.*

It has come to my attention that some of the 2008 IG Act reforms have had some unintended consequences. For one, in an attempt to take salaries for Designated Federal Entity (DFE) IGs out of the hands of the agency heads they're tasked with overseeing, we created a formula to tie their salaries to those of the top executives in their agencies. What has happened as a result, is that some of these small agency IGs are making salaries that are more than 70% higher than the statutory IGs. Reuters reported that the Fed IG is making over \$300,000, more

than Janet Yellen and far more than the IGs tasked with oversight of some of our largest federal departments.

I have been, and continue to be, a strong supporter of the work of IGs. I think you all deserve to be paid as much as the top executives at federal agencies because you should be considered a top executive. Your work is critical to the well-functioning of this government, and I don't think anyone works harder than the IG community at making our government as efficient and effective as possible. But this formula has created sort of an upside down structure where the smallest IGs are making the most money.

6. Will you collect and provide to my staff salary information for all DFE IGs?

*Response: Yes, the Council of Inspectors General on Integrity and Efficiency is in the process of working with its IG members to collect salary information and provide that information to your staff.*

**Post-Hearing Questions for the Record  
Submitted to Michael E. Horowitz  
From Senator Cory A. Booker**

**“Improving the Efficiency, Effectiveness, and Independence of Inspectors Generals”**

**February 24, 2015**

**Policing**

1. Last year, the Department of Justice released a report into policing tactics in Newark, New Jersey. The report found that police stopped blacks at a significantly higher rate than whites. Just this month, the Department of Justice recently released a report concluding that local law enforcement officials in Ferguson, Missouri engaged in discriminatory enforcement during traffic stops and arrests involving African Americans. What oversight efforts have you done to ensure that FBI and other federal agents are not engaging in racial profiling?

*Response: The Department of Justice (DOJ or Department) Office of the Inspector General (OIG) has conducted reviews examining policies and procedures of Department law enforcement components regarding civil rights and racial concerns. Specifically, in January 2015 the OIG issued a report on the Drug Enforcement Administration's (DEA) use of cold consent encounters at mass transportation facilities. These encounters can include instances when an agent approaches an individual based on no particular behavior or based on the officer's perception that the person is exhibiting characteristics indicative of drug trafficking without the officer having any independent predicated information. The OIG found that because cold consent encounters can raise civil rights concerns regarding matters such as racial profiling, DEA should consider how to determine if such encounters are being conducted in an impartial manner.*

*Also, under Section 1001 of the USA PATRIOT Act, the OIG is directed to review complaints alleging abuses of civil rights or civil liberties violations by Department employees and officials of the Department of Justice. Therefore, every 6 months, the OIG reviews such allegations and prepares a report for Congress. Our USA PATRIOT Act reports can be found on our website at: <http://www.justice.gov/oig/reports/patriot.htm>. As you will note in these reports, we provide information regarding complaints processed during the reporting period, as well as pending and closed investigations relating to civil rights and civil liberties allegations. For example, between July 1, 2014, and December 31, 2014 (the last reporting period), the OIG processed 458 new civil rights or civil liberties complaints. In addition, these USA PATRIOT Act reports provide further information about other OIG activities relating to potential civil rights and civil liberties issues. The latest such report can be found on our website at: <http://www.justice.gov/oig/reports/2015/s1503.pdf>.*

2. Last month, the White House Task Force on Twenty-First Century Policing recommended that state and local police shootings be investigated by independent prosecutors. What efforts have you taken to conduct oversight over federal police shootings of minority citizens?

*Response: The federal criminal investigation of shootings by employees of the Department's law enforcement components typically has been handled by the Federal Bureau of Investigation (FBI) or other law enforcement components. The decision whether federal criminal civil rights charges are warranted in any particular incident is made by the Criminal Section of the Department's Civil Rights Division, frequently in coordination with the United States Attorney's Office where the incident occurred. If local and federal criminal prosecution is declined, the administrative review of shooting incidents within the Department's law enforcement components typically has been handled by the individual components' shooting review boards.*

*The OIG has been working with the Civil Rights Division and the Department's law enforcement components to develop a memorandum of understanding that would ensure that the OIG has timely access to the information regarding shooting incidents necessary to enable it to express its opinion to the Civil Rights Division as to whether federal criminal civil rights charges are warranted. The current draft of this memorandum of understanding also acknowledges the ability of the OIG to participate in any such criminal investigation, and to assume responsibility for any subsequent administrative misconduct review where appropriate. The current draft of the memorandum of understanding has been distributed to the components and the Department for final comments, and the OIG hopes to have the agreement in place in the near future.*

3. Do you believe an independent prosecutor should investigate federal police shootings?

*Response: Our understanding is that, as a general matter, a non-federal prosecuting office that is independent of the Department usually makes the initial prosecutorial evaluation regarding the appropriateness of a federal law enforcement shooting. We further understand that the Criminal Section of the Department's Civil Rights Division also determines whether a federal law enforcement shooting is prosecutable under the federal criminal civil rights laws.*

4. One of the findings of the White House Task Force on Twenty-First Century Policing was the need for greater training aimed at the de-escalation of volatile encounters. I am concerned that federal law enforcement agents need greater training in de-escalation tactics. Do you share my concern, and, what oversight efforts have you done on training federal agents with respect to de-escalation tactics?

*Response: We have not conducted a review specific to the Department's law enforcement components' training in de-escalation tactics. We have issued several reports that recommended enhanced training be developed for Department law enforcement employees. For example, in our review of the DEA's international operations, we recommended that the DEA determine if all members of the DEA's Sensitive Investigative Unit (SIU) received SIU basic training, and if not, ensure all current members receive the Basic Training course. According to DEA officials, the agency relies on the SIU Basic Training course to raise the investigative ability of SIU members, ensuring they use sound investigative techniques and responsible procedures for handling sensitive information. In a sample size of 100 SIU members, the OIG was unable to trace 26 members (26 percent) to the course rosters maintained at the Training Academy. All 22 recommendations in this report are closed. Our*

OIG report can be found on our website at:  
<http://www.justice.gov/oig/reports/DEA/a0719/final.pdf>.

Additionally, in our review of the FBI's weapons of mass destruction (WMD) coordinator program, we recommended that the FBI develop a targeted WMD training plan encompassing both general and specific WMD-knowledge requirements for Intelligence Analysts who work with WMD Coordinators. This plan should address the specific vulnerabilities and threats of a field division's WMD domain. All 13 recommendations in this report are closed. Our OIG report can be found on our website at:  
<http://www.justice.gov/oig/reports/FBI/a0936.pdf>.

5. At the hearing, I asked you a question about the diversity of special agents at the FBI. What assurances can you give me that your office will investigate any possible nexus between whether the lack of diversity in federal law enforcement increases the risk of racial profiling?

*Response:* We appreciate the concern that you raised at the hearing and realize that it could have serious implications. Our concern about the risk of racial profiling is evident from our January 2015 report on the Drug Enforcement Administration's use of cold consent encounters at mass transportation facilities. While we are able to conduct audits, investigations, evaluations, and inspections that look at the specific issues concerning federal law enforcement and racial profiling, the OIG does not have the capability to conduct generalized research on these types of issues.

#### **Police Use of Military Equipment**

6. Has the Department of Justice played any role in the use of military equipment by federal, state, or local law enforcement officials? If so, please explain in detail.

*Response:* The OIG has conducted numerous audits of grant funds provided by the Department to state and local governments as well as funds provided through the equitable sharing program. In addition to ensuring that the agency properly accounts for the funds it receives, our standard procedure when reviewing equitable sharing program funds involves determining whether these revenues are used for allowable purposes, such as the purchase of law enforcement equipment, training, or to support investigations and operations that further law enforcement goals.

In addition, in our September 2013 interim report on the Department's use and support of unmanned aircraft systems (UAS), we found that the Department does not always know when and how state and local law enforcement are using drones. For example, during our review we found that the Office of Justice Programs (OJP) appeared to have difficulty identifying Bureau of Justice Assistance (BJA) UAS awards to local law enforcement. However, our review of FAA-approved Certificates of Waiver or Authorization (COA), public source information, and contacts with local police department officials identified awards to the police departments of Miami-Dade County, Florida, and North Little Rock, Arkansas. Only after notifying OJP and BJA of this information was BJA able to confirm these UAS awards. BJA stated it did not initially identify these awards because it had only searched its largest grant program for UAS awards. In addition, BJA did not use a standardized term for UAS



technology that would quickly identify all UAS awards in its Grants Management System. As a result, during our interim report, we could not rule out the possibility that additional awardees may have been provided DOJ funds to acquire or deploy UAS. We therefore recommended that OJP assess and enhance its ability to track UAS-related awards to ensure that it can readily identify how DOJ award funds have been used to support UAS technology. OJP concurred with this recommendation and it is now closed. Six of the remaining recommendations are closed and one remains open. Our OIG report can be found on our website at: <http://www.justice.gov/oig/reports/2013/a1337.pdf>.

Further, in our March 2015 review of the Department's use of unmanned aircraft systems, we confirmed that the FBI, ATF, DEA, and USMS received support from UAS operated by the DHS and none of the Department components had an agency-wide recordkeeping policy or practice to document support provided by non-DOJ UAS. Similarly, components maintained little documentation of non-DOJ UAS flights in the field. A review of 50 flights in which DHS operated UAS involving DOJ components found that the extent of DOJ involvement in these missions varied significantly, and most commonly, the cases receiving non-DOJ UAS support involved joint task forces whose members included other federal, state, and local agencies. When these non-DOJ UAS flights took place, components did not have policies that specifically required the tracking or documenting of non-DOJ UAS use. In addition, we found the only DOJ component to deploy its own UAS was the FBI, which used small UAS weighing under 55 pounds, that would not be considered military equipment. The report also noted that the Federal Aviation Administration approved FBI's use of its UAS for all operations within the United States since 2010. Our OIG report can be found on our website at: <http://www.justice.gov/oig/reports/2015/a1511.pdf#page=1>.

7. Are you concerned about law enforcement officers using military equipment?

*Response:* We too are concerned about this issue and will continue to monitor the issue very closely.

8. What have you done to ensure that the use of military equipment given by federal government officials to state and local officials is done with proper oversight?

*Response:* The OIG has conducted numerous audits of grant funds provided by the Department to state and local governments, as well as funds provided through the use of its equitable sharing program. In addition to ensuring that the agency properly accounts for the funds it receives, our standard procedure when reviewing equitable sharing program funds involves determining whether these revenues are used for allowable purposes, such as the purchase of law enforcement equipment, training, or to support investigations and operations that further law enforcement goals. For example, we conducted an audit of equitable sharing program activities by the Lansing, Michigan, Police Department, which used equitable sharing funds to purchase 16 military-grade rifle scopes for its tactical team. In this review, the OIG found that the Lansing police department commingled DOJ equitable sharing funds with state of Michigan asset forfeiture funds, used \$3,061 in equitable sharing funds to pay for overtime of a civilian employee, and used \$12,563 in equitable sharing funds for officers' uniform allowance without having proper supporting documentation. This

report can be found on our website here:

<http://www.justice.gov/oig/reports/2013/g5014002.pdf>.

*In addition, we reviewed Bureau of Justice Assistance (BJA) grants awarded to the County of Belknap, Laconia, NH, which used grant funds to purchase a mobile command vehicle and thermal imaging devices for a regional task force. In this report, the OIG found that the sheriff inappropriately and without prior knowledge and authorization from BJA, effectively transferred the management of these grants, including the financial responsibilities, to a nonprofit organization. We also determined that this organization lacked adequate internal controls, including a financial accounting system, and was not audited during the period these grants were active. The executive summary of this report can be found on our website here: <http://www.justice.gov/oig/grants/g7009002.htm>.*

#### **The Poor and Fines**

9. The Justice Department recently filed court documents in a lawsuit over whether the City of Clanton, Alabama is running a debtor's prison. Similarly, press reports indicate that federal officials are looking into whether the City of Ferguson, Missouri is imprisoning people who are unable to pay mounting traffic fines. I am concerned that local officials jail poor people, especially African Americans and Latinos, due to their inability to pay fines. What oversight efforts have you done to ensure vigorous federal oversight over local policing practices that use fines to jail poor citizens does not have a disparate impact on minority citizens?

*Response: While we appreciate the importance of this issue, the OIG does not have jurisdiction over the activities of local police, outside of the federal government or Department of Justice. The Department's Civil Rights Division monitors activities by state and local governments for any possible violations of civil rights laws.*

### Privatized Prisons

10. The Department of Justice's Bureau of Prisons (BOP) routinely contracts with private prisons. But recent news articles have highlighted the blatant disregard for the human rights of prisoners that characterize prisons in the United States, especially private, for-profit prisons. What are you doing to exercise oversight over abuses in privatized prisons that contract with BOP?

*Response: Every year, the OIG issues a report on the Top Management and Performance Challenges facing the Department of Justice. The most recent version of this report was issued in November 2014 and can be found at: <http://www.justice.gov/oig/challenges/2014.htm>. In this document, we identified issues in the federal prison system as one of the Top Challenges for the Department, both in terms of cost and budgeting implications as well as the safety and security concerns. We further noted that effective oversight of private contract facilities is critical to ensuring the safety and security of both inmates and correctional officers as well as the efficient use of taxpayer dollars in this area. The proportion of inmates housed in contract facilities has increased substantially, from 2 percent of the prison population in 1980 to 19.5 percent in 2013. Riots in three privately managed Bureau of Prisons (BOP) contract facilities from 2009-2015 resulted in the death of a correctional officer, severe injuries to prisoners and employees, and over \$60 million in property damage. The causes of these incidents have been at least partially attributed to prisoners' reactions to their perceptions of inadequate medical conditions and mistreatment at the facilities.*

*The OIG is committed to addressing these and other concerns in BOP's private contract facilities. For example, the OIG is conducting an audit of the Reeves County Detention Center located in Pecos, Texas, where a riot occurred in 2009. The objective of this audit was to assess the BOP's and contractor's compliance with contract terms and conditions in the areas of billings and payments, staffing requirements, and contract oversight and monitoring. The scope of this audit is focused on contract performance from October 1, 2008, through December 31, 2013.*

*The OIG is also currently conducting a broad program review of how BOP manages its private prison contracts. This review is examining whether contract prisons are in compliance with BOP requirements, as well as how contract facilities compare with similar BOP facilities in terms of inmate safety, security, and cost. In addition, the OIG will review the use of segregated, or restrictive, housing in private contract facilities and federal prisons, and the BOP's placement of inmates with mental illness in restrictive housing. The review will further assess corrective actions implemented or planned by the BOP in response to findings and recommendations from an independent assessment of the BOP's restrictive housing programs conducted in 2014.*

11. On February 20, 2015, prisoners at the Willacy County Correctional Facility in Texas refused to eat breakfast and work to protest inadequate medical care at the for-profit prison. The next day, the BOP declared the Willacy prison, which houses mostly undocumented immigrants, uninhabitable and its 2,800 prisoners would be moved to other prisons. Have you

investigated the lack of adequate medical care at this prison and, if so, what steps will you take to correct this lack of a basic human necessity?

*Response: The OIG is collecting information to learn about the recent incident at Willacy County Correctional Facility. Based on this information, we will make a determination as to whether to conduct further review of the matter.*

12. The lack of adequate health care at the Willacy for-profit prison led to a riot. In response to the riot, correctional guards used tear gas to quell the riot. Do you think the use of tear gas on prisoners is a reasonable use of force?

*Response: As noted above, the OIG is collecting information regarding the incident at Willacy County Correctional Facility. At this time, we have not conducted a review of this question.*

13. According to press reports, for-profit private prisons are not required to provide education and rehabilitation programs to immigrant prisoners. Is this true and, if it is, what steps are you taking to change the policy of access to education and rehabilitation programs in private prisons that contract with BOP?

*Response: The OIG has not conducted work previously regarding education and rehabilitation programs in private prisons. As stated above, the OIG is examining how the BOP manages its private prison contracts, whether contract prisons are in compliance with BOP requirements, and how contract facilities compare with similar BOP facilities in terms of inmate safety, security, and cost.*

14. I am concerned about private prisons holding noncitizens with no criminal convictions. These so-called family detention centers have been reported to have numerous abuses, as documented in a February 4, 2015, New York Times article, entitled “The Shame of America’s Family Detention Camps.” The article details women and children being detained in squalor conditions without the government providing education to the children detained in its care. Have you investigated these allegations and, if so, what did you find?

*Response: The detention of non-U.S. citizens, with the exception of those in the federal criminal justice system, is outside the jurisdiction of the DOJ OIG because those individuals are being detained by the Department of Homeland Security.*

#### **Use of Solitary Confinement**

15. According to press reports, prison isolation has driven prisoners deep into mental illness, with prisoners reporting suicide attempts and self-mutilation. I am concerned that the use of solitary confinement in BOP facilities and in for-profit prisons BOP contracts with violates people’s human rights. Do you share my concern and what, if anything, are you doing to investigate the impact of solitary confinement on the mental health of prisoners?

*Response: The OIG is currently reviewing the BOP's placement of inmates with mental illness in restrictive housing. The review will examine trends in the use of restrictive housing from fiscal year (FY) 2010 through FY 2014. The review will also evaluate the screening, treatment, and monitoring of inmates with mental illness who are housed in restrictive housing units at BOP-managed institutions, including its Administrative Maximum Security Institution. In addition, the review will assess corrective actions implemented or planned by the BOP, in response to findings and recommendations from an independent assessment of the BOP's restrictive housing programs conducted in 2014. Finally, the review will examine state correctional systems' reforms in the use of restrictive housing for inmates with mental illness and evaluate potential benefits for consideration by BOP.*

16. I understand that a standard provision in BOP contracts with private prisons is the requirement that ten percent of the prison beds be used for special housing unit, a euphemism for solitary confinement. Are you concerned that these minimum occupancy quotas, which guarantee payment for a certain number of prisoners, encourage the incarceration of more people since these spots are usually paid for?

*Response: We agree with the concern you raise. In our review of the Reeves County Detention Center, according to BOP officials, the maximum amount of contract beds did not include any beds in the special housing unit. The OIG confirmed that this was accurate. Therefore, we did not assess minimum occupancy quotas in our review of this private contract prison.*

17. What are you doing to review BOP contracts with private prisons to reduce or eliminate the use of minimum occupancy quotas?

*Response: As previously stated, the OIG is currently examining how the BOP manages its private prison contracts, whether contract prisons are in compliance with BOP requirements, and how contract facilities compare with similar BOP facilities in terms of inmate safety, security, and cost. Our review will discuss findings related to the use of Special Housing Units to manage general population inmates.*

#### **Prison Overcrowding**

18. Please provide me with a list of all BOP facilities, including for-profit prisons that BOP contracts with, which are currently overcrowded.

*Response: As of June 2014, federal prisons operated at 33 percent overcapacity, with 42 percent overcrowding at higher security facilities and 40 percent at medium security facilities. Overcrowding in the federal prison system has prevented the BOP from reducing its inmate-to-correctional officer ratio, which according to the Congressional Research Service has remained at approximately 10-to-1 for more than a decade. The Department's FY 2014-2018 strategic plan includes an outcome goal to reduce system-wide crowding in federal prisons to 15 percent by FY 2018. To obtain a list of all BOP facilities, including private contract prisons, that are currently overcrowded, the BOP is better suited to provide a response to your inquiry. Accordingly, we will be referring your request to the BOP.*

19. The United States has the largest prison population in the world, both in absolute numbers and as a percentage of the population. For example, this nation's prison population grew from 319,598 people in 1980 to 1.57 million people in 2013, a nearly four-fold increase in 33 years, a time where crime rates were falling. I am concerned that private prisons are a fast growing part of the problem. What steps are you taking to reduce prison overcrowding in BOP facilities and for-profit private prisons that contract with BOP?

*Response: The OIG ensures effective oversight by making recommendations to the Department based on our reviews, tracking the corrective actions taken in response to our recommendations, and following up on the open recommendations, when necessary. However, the Department, not the OIG, makes management decisions and implements policies. As stated in our recent Top Management and Performance Challenges Facing the Department (November 2014), referenced above, the Department needs to better utilize programs that can assist in prison population management, particularly existing programs and policies that Congress has already authorized. The OIG found in its 2013 review of the BOP's Compassionate Release Program that the program was not well-run and that an effectively managed program could assist the BOP with its prison capacity issues, which would result in cost savings for the BOP. Following our review, the BOP expanded its Compassionate Release Program to include criteria for elderly inmates with and without medical conditions.*

*Similarly, in our review of the Department's International Prisoner Transfer Program in 2011, which permits certain foreign national inmates from treaty nations to serve the remainder of their sentences in their home countries, the OIG found that the Department rejected 97 percent of transfer requests by foreign national inmates, and that in FY 2010 few foreign inmates were transferred back to their home countries. Following our review, the BOP took steps to ensure that the treaty transfer program was communicated more effectively to inmates. According to recent BOP data, the number of inmates requesting transfer has increased significantly; however, the number of foreign inmates ultimately transferred to their home countries remains stagnant. The OIG is currently conducting a follow-up review of this report, which will examine the progress made by the Department to more effectively manage the International Prisoner Transfer Program. The review will also further evaluate factors that limit the number of inmates ultimately transferred. We anticipate completing our follow-up review of the treaty transfer program in the near future, and plan to report on whether there is additional progress that can be made to reduce prisoner numbers and costs in this area.*

### Oversight Over BOP Prisons

20. I am concerned that BOP prisons may contract with vendors for private services, such as food, healthcare, telephone, and financial services, without proper oversight. For example, press reports indicate that, in Florida, privatization of prison health services led to increased inmate deaths as well as delay and outright denials of service. How are you ensuring that BOP prisons that use private services are doing so with rigorous oversight?

*Response: The OIG ensures effective oversight by making recommendations to the Department based on our reviews, tracking the corrective actions taken in response to our recommendations, and following up on the open recommendations, when necessary. As part of the OIG's current review of the impact of the BOP's aging inmate population on inmate and custody management, including programming, housing, and costs, we will be discussing the use and cost of outside contractors for health services.*

*In addition, in another upcoming review, the OIG will review the reimbursement rates that the BOP pays for inmate medical care provided outside of BOP institutions. The review will examine trends in reimbursement rates between FY 2010 and FY 2014, factors other than cost that influence the BOP's selection of a comprehensive medical services contractor, and the impact of higher-than-Medicare reimbursement rates on the BOP's medical costs.*

### Diversity

21. The FBI recently released data showing a decline in the number of African American and Latino special agents within its ranks. African Americans account for 4.5 percent of FBI special agents at the end of 2014, down from 5.6 percent in 1997. Latino agents made up 6.81 percent of FBI special agents at the end of 2014, down from 7.14 at the end of 2012. Do you share my concern about the lack of diversity in the FBI's special agent ranks and, if so, what are you doing to ensure the FBI's racial diversity of its elite special agents is improved?

*Response: We recognize the importance of diversity in the ranks of Department law enforcement. However, decisions about how to ensure a more diverse workforce are made by management of the Department's law enforcement components and the Department's senior leadership, and not by the OIG. Please also see above response to Question #5.*

22. Please provide me a list of the current numbers of total attorneys compared to the total numbers of African American and Latino attorneys in each litigating division within the Department of Justice.

*Response: The Department of Justice maintains this information, and the Department is better suited to provide a response to your inquiry. We will be referring your request to the Department's Office of Legislative Affairs.*

23. Please provide me a list of the current numbers of total Assistant United States Attorneys (AUSAs) nationally compared to the total numbers of African American and Latino AUSAs in the Criminal Division of all United States Attorneys' Offices.

*Response: The Department of Justice maintains this information, and the Department is better suited to provide a response to your inquiry. We will be referring your request to the Department's Office of Legislative Affairs.*

24. Do the lack of minority federal prosecutors at the Department trouble you and, if so, what steps are you taking to improve the diversity of our federal prosecutors?

*Response: We recognize the importance of diversity in the ranks of federal prosecutors. However, decisions about how to ensure a more diverse workforce are made by management of the U.S. Attorney's Offices (USAOs) and the Department's components, as well as the Department's senior leadership, and not by the OIG.*

#### **Police Misconduct**

25. In an exit interview, Attorney General Eric Holder declared that the bar for proving federal criminal civil rights charges in police misconduct cases is too high. Do you agree? Please explain your answer in detail.

*Response: The OIG has not examined or reviewed this issue, and without further information, we cannot make a policy recommendation. This issue is more suited to be directed to the Department of Justice, and we will be referring your inquiry to the Department's Office of Legislative Affairs.*

26. Please list the number of open investigations for police misconduct and/or excessive force in the Department's Civil Rights Division?

*Response: The Department of Justice maintains this information, and the Department is better suited to provide a response to your inquiry. We will be referring your inquiry to the Department's Civil Rights Division.*

27. Please list the number of cases where the Civil Rights Division filed federal charges against state or local officers for police misconduct and/or excessive force in each year over the last ten years.

*Response: The Department of Justice maintains this information, and the Department is better suited to provide a response to your inquiry. We will be referring your inquiry to the Department's Civil Rights Division.*

28. Are you concerned that number of federal prosecutions of police misconduct are too low?

*Response: The OIG has not examined or reviewed this issue, and without further information, we are unable to evaluate whether the number of prosecutions is too low.*



### **Marijuana**

29. Marijuana is currently a schedule I controlled substance, which is the same classification as heroin. But research has shown that marijuana is about as harmful as alcohol. There is legislation pending in Congress that would reduce marijuana from a Schedule I to a Schedule II controlled substance. Would you support this reclassification?

*Response: The OIG does not make any policy decisions regarding the classification of controlled substances. We will be referring your inquiry to the Department's Office of Legislative Affairs.*

30. What oversight efforts are you doing to ensure that federal marijuana prosecutions in states that have legalized marijuana do not infringe on federalism?

*Response: The OIG has not conducted a review on this particular matter.*

### **Mandatory Minimum Penalties**

31. You are a former federal prosecutor. You are aware that Attorney General Eric Holder's Smart on Crime Initiative focused on reducing the harsh mandatory minimum sentences for low-level drug offenses. Do you support reducing mandatory minimum penalties? Please explain in detail.

*Response: The OIG does not make policy decisions regarding the mandatory minimum penalties. However, the OIG has addressed the importance of sentencing issues in its recent Top Management and Performance Challenges report when we identified the persisting crisis in the federal prison system as one of the Department's top challenges, and stated that the Department must better utilize programs that can assist in prison population management, particularly existing programs and policies that Congress has already authorized. The Department has announced, through its Smart on Crime Initiative, programs and changes in prosecution, sentencing, and early release policies that could reduce federal prison costs, promote prevention and reentry programs, and encourage prosecutors to draft criminal charges for low-level nonviolent drug offenders in ways that will not trigger mandatory minimum sentences. Efforts by the Department to better align the investigative and prosecutive policies that drive incarceration costs with the Department's current budget situation and the challenge of reducing the over-capacity in its prisons will depend on the success of the Smart on Crime implementation. We anticipate initiating a review on the Smart on Crime Initiative later this year.*

*To assess the Department's efforts, the OIG is currently conducting an audit that will evaluate the design and implementation of pre-trial diversion and drug court programs, variances in the usage of the programs among the USAOs, and costs savings associated with successful program participants. In addition, our ongoing review of aging inmates in the BOP's custody will include a discussion of the Department's recent efforts to expand the compassionate release program for elderly inmates.*

32. Do you believe legislation is necessary to codify the Department's efforts to reduce mandatory minimum penalties?

*Response: The OIG has not examined or reviewed this particular issue, and without further information, we cannot make a recommendation on the Department's mandatory minimum penalty policies.*

33. Chief Judge Julie Carnes stated, on behalf of the Judicial Conference, that the stacking of penalties under 18 U.S.C. 924(c) were among the "most egregious mandatory minimum provisions that produce the unfairness, harshest, and most irrational results." You are a former federal prosecutor. Do you agree with Chief Judge Carnes' assessment of mandatory minimum penalties?

*Response: You identify an important issue that can have a significant impact on the inmate population in federal facilities. We remain concerned that one of the factors that could be contributing to the increasing number of prisoners in the federal prison system is the prosecution, at the federal level, of many offenses that were previously handled largely or exclusively by state and local authorities. As stated in our 2013 Top Management and Performance Challenges Facing the Department, one estimate shows that the number of federal criminal offenses grew by 30 percent between 1980 and 2004; indeed, there are now well over 4,000 offenses carrying criminal penalties in the United States Code. In addition, an estimated 10,000 to 100,000 federal regulations can be enforced criminally. We recommended that the Department should consider how the federalization of criminal law has affected its budget and operations, and whether rebalancing the mix of cases charged federally might help alleviate the budget crisis posed by the federal prison system without sacrificing public safety, particularly where state and local authorities have jurisdiction to prosecute the conduct.*

34. What steps are you taking to conduct effective oversight over federal prosecutors' use of 924(c) stacking provisions?

*Response: As we consider our possible review of the Smart on Crime Initiative, among the questions that have been asked of the OIG is whether the Department's charging practices with regard to mandatory minimums have changed consistent with the Attorney General's guidance and what the current practices are at the Department regarding charging of mandatory minimum offenses, including the use of "stacking" provisions.*

35. Should Congress eliminate the stacking requirement and amend 18 U.S.C. 924(c) to give the sentencing court discretion to impose sentences for multiple violations concurrently with each other?

*Response: Because we have not yet conducted a review of this specific issue, the OIG is not in a position to make any findings or recommendations regarding the Department's practice.*

### Collateral Consequences

36. Currently, felony disenfranchising laws bar an estimated 5.8 million citizens from exercising their fundamental right to vote after being convicted of a felony offense. Do you support re-enfranchising formerly incarcerated people?

*Response: The OIG has not examined or reviewed this particular issue.*

37. Do you believe there is a legitimate justification to bar people from voting after they have paid their debt to society and has been released from prison?

*Response: Please see response to question above.*

38. When people are convicted of crimes they often lose the right to access, or have trouble gaining, federal benefits, employment, and housing. Yet, when people are homeless, unemployed, and cannot eat that is a recipe to returning to a life of crime. What assurances can you give me that you will investigate the necessity for, and impact of, collateral consequences on poor and minority communities?

*Response: The OIG has not conducted a review of the collateral consequences on poor and minority communities resulting from criminal convictions. However, the OIG is currently assessing the extent to which the BOP is meeting the goals of the Release Preparation Program and how the BOP tailors the program to meet inmate needs. The BOP's Release Preparation Program encompasses six areas in which the BOP provides programming to inmates while they are incarcerated in BOP facilities. The six areas are health and nutrition, employment, personal finance and consumer skills, information and community resources, release requirements and procedures, and personal growth and development and are intended to assist inmates in making successful re-entry after incarceration. The OIG is examining the implementation of these program areas throughout BOP institutions. Release preparation is also an aspect of the OIG's current review of the impact of the BOP's aging inmate population on inmate and custody management, including costs, health services, staffing, housing, and programming, such as release preparation programming.*

39. Please send me a list of all the federal drug courts, veterans' courts, and mental health courts in the federal system.

*Response: The OIG does not have jurisdiction over United States courts, and therefore is unable to provide a comprehensive list of federal specialty courts, including drug courts, veterans' courts, and mental health courts. Such a request would more appropriately be made to the Administrative Office of United States Courts.*

*The OIG, however, is currently conducting an audit of pre-trial diversion and drug court programs. The OIG will evaluate the design and implementation of the programs, and variances in the usage of the programs among the USAOs. Based on the scope of our audit work, we have identified the following 11 drug courts that met the criteria as defined in our audit.*

<b>District</b>	<b>Program</b>
Central District of California	Convictions and Sentence Alternatives
Southern District of California	Alternatives To Prison Solution
District of Connecticut	Support Court
Central District of Illinois	Pretrial Alternatives to Detention Initiative
District of New Hampshire	Law Abiding, Sober, Employed and Rehabilitated
Eastern District of New York	Pretrial Opportunity Program
Eastern District of New York	Special Options Services Program
Western District of Pennsylvania	Veterans Treatment Court
District of South Carolina	BRIDGE Program
Western District of Virginia	Veterans Treatment Court
Western District of Washington	Drug Reentry Alternative Model

40. What oversight efforts have you taken to improve the state of alternatives to incarceration, including federal drug courts?

*Response: Pre-trial diversion and drug court programs are alternatives to incarceration that enable prosecutors, judges, and correctional officials to divert certain offenders from traditional criminal justice proceedings into programs designed to address the underlying cause for criminal behavior. As stated above, the OIG is conducting an audit that will evaluate the design and implementation of these programs, and variances in the usage of the programs among the USAOs. Additionally, we anticipate initiating a review on the Attorney General's Smart on Crime Initiative later this year.*

*In addition, we recently completed an audit of the Brooklyn Residential Reentry Center (RRC), in which we found that the conditions of the contract were not met, as well as identified issues relating to inmate security and accountability. The private contractor, Community First Services (now known as Core Services), was required to provide education and rehabilitation programs. As part of inmate intake procedures, a RRC is required to assess the individual needs of each inmate and use the information to develop an Individualized Reentry Plan (IRP). During our review of 49 inmate files selected as a judgmental sample for further testing, we determined that most, 44 of 49 (nearly 90 percent), included IRPs. However, we identified five inmates for whom the inmate file did not contain an IRP. Additionally, in reviewing those IRPs that were located in the inmate files, 10 plans were not completed within the first 2 weeks as required. We also identified three inmates whose program planning meetings were not conducted timely, and an additional five inmates in which there was no indication in the file that program planning meetings were conducted. Brooklyn RRC staff was not able to provide an explanation for the issues we identified related to program planning meetings. By not ensuring IRPs are completed in a timely manner, there is the risk that inmates' needs may not be met on a timely basis, such as drug and alcohol treatment, employment, and life skills training. We recommended BOP implement measures to ensure Brooklyn RRC completes IRPs and program planning meetings in a timely manner and also ensures all required documentation is maintained in inmate case files. The BOP and Community First Services agreed with our recommendation to complete IRPs in a timely manner. Our OIG report can be found on our website at: <http://www.justice.gov/oig/reports/2015/g7015003.pdf#page=1>.*

*Additionally, in March 2012 we issued a report on the BOP's contracting for and management of RRCs. We identified deficiencies related to substance abuse testing, inmate subsistence payments, escapes, and authorized inmate absences. Specifically, we found that the RRCs need to improve performance related to performing required breathalyzer tests; inmate escape procedures and reporting; and inmate accountability and discipline. For example, each RRC must randomly test at least 5 percent of all inmates for drugs and alcohol monthly, with a minimum of one inmate tested per month, in order to deter and detect the illegal introduction of drugs and alcohol into the facility. We found at 5 of the 6 RRCs a total of 37 of the inmates identified from our sample (30 percent) were not given all four required drug tests during one of the 1-month periods. Additionally, from our sample of 177 inmates at the 6 RRCs, we identified 88 inmates who had escaped from the RRCs. The length of escape before an inmate was apprehended ranged from 1 day to 901 days, and 53 percent*

*of the inmates were not apprehended until more than 10 days after the escape was reported. We made 10 recommendations to assist the BOP in strengthening the operation, administration, and monitoring of the RRC program. Our OIG report can be found on our website at: <http://www.justice.gov/oig/reports/2012/a1220.pdf>.*

#### **Black Site Jails**

41. According to a report last month by the *Guardian*, the Chicago police department has been holding people in a nondescript warehouse complex known as Homan Square and denying them basic *Miranda* rights such as the right to remain silent and the right to an attorney. The report also alleged that detainees were tortured and no records of the detainees were being kept. Has the Justice Department opened an investigation into this so-called black site jail?

*Response: While we appreciate the importance of these allegations, the OIG does not have jurisdiction to investigate such allegations against a local police department. Therefore, the Department of Justice is better suited to respond to this inquiry and we will be referring the question to the Department's Office of Legislative Affairs.*

42. What assurances can you give me that BOP has not used any funds to contract with a state or local jail that detainees [*sic*] people without keeping any records of the detainees or that violates the detainees' *Miranda* rights?

*Response: We have not conducted a review of this issue and therefore will be referring your question to the BOP.*